A comparison between Japan and Norway regarding ILO Convention No. 169

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A northern light embracing the dark sky in winter, here in North Norway has always given me special communication to remind myself of my connection to Ainu culture, my initial motivation in life.

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Abstract

Who defines indigenous peoples, and in whose interests does the definition serve? If there is a definition that is regulated in relation to indigenous peoples, how much does it the protect rights of indigenous peoples? Considering these questions as my point of departure, I have chosen to do a comparative study on the Sami in Norway and the Ainu in Japan in the context of ILO Convention No. 169. There are great differences between the Sami and Ainu in terms of governmental policy, legal frameworks, institutional structures, levels of domestic and international movement, awareness of human rights, and social atmospheres, especially given the fact that Norway is the first country to ratify ILO Convention No. 169.

A main focus of this thesis is to pursue understanding the causes of those differences as well as similarities focusing. Moreover, how ILO Convention No. 169 has or has not been implemented at the domestic and international level is another main focus in this thesis.

The thesis relies on an interview method to clarify the facts, and draws upon different levels to illustrate the topic by using texts and by interviewing people who have various perspectives on the issue. For instance, I interviewed Sami representatives who have been involved with the process of ratification of the ILO Convention No. 169 at the international and domestic levels and the Ainu representatives who have dealt with the international and domestic issue. Also, the government officials and ILO representatives also provided a different perspective on this matter.

Finally, the thesis concludes with description of the dilemma that has been created in the process of legal and political development of the Sami and Ainu, and it suggests possible solutions for these matters in the future. The thesis focuses mainly on the legal perspective; but also by using the author's own subjective experience as a point of reference it brings into focus other dimensions of indigenous politics, knowledge, and reality.

Chapter 1: Introduction

Norway was the first country in the world to ratify the International Labour Organization's Convention 169, also known as the Indigenous and Tribal Peoples Convention of 1989. Japan, on the other hand, has not ratified ILO Convention No. 169. There are other international instruments that could protect rights of indigenous peoples, but I intentionally chose ILO Convention No. 169 as it is the only negotiated international instrument by indigenous peoples and specifically dealing with indigenous peoples.

As it seems, the Sami in Norway use ILO Convention No. 169, not only as a legal tool, but also as a political tool to develop their political status in Norway. It is interesting to analyze how they have achieved a certain level of political status in a comparison to the Ainu in Japan, which seem to have more difficulty in utilizing the legal instrument as a political tool. This will be an interesting contrast in this thesis.

Moreover, in order to illustrate the whole picture at the international and domestic levels, I would like to use the two domestic examples from each county. Also, the author, an Ainu herself, uses subjective expression when necessary.

Why have Norway and Japan taken different approaches to Convention No.169? These research questions are central questions in this thesis which will be addressed in order to clarify similarities and differences between Norwegian and Japanese governments and indigenous peoples[1] of Norway, the Sami[2] as well as indigenous peoples of Japan, the Ainu[3].

Explanation of the research questions and hypothesis

Two central research questions mentioned above seek to clarify similarities and differences between the two state governments and the Sami and the Ainu. These questions will be

[1] I will layout the concept of indigenous peoples in this text : 31

[2] 'Sami', a term derived from the Sami language, has been in use since the 1960s. Previously, the Sami were often called 'Lapps' or 'Lapp' is the old Swedish language term for a person of Sami descent. The corresponding Finnish term is 'lappalainen.' Their culture reflects their close relationship with the nature and their traditional livelihoods. The Sami were hunters of wild reindeer, moose and small game from the article of Myntti, The NORDIC SAMI PARLIAMENTS, 2000: 203

[3] "Ainu" means "people" or "humans" in the Ainu language, Fitzhugh 1999 : 9

analyzed in terms of the acceptance, implementation, conceptualization, and application of ILO Convention No. 169. because these elements play different roles in each national context.

Moreover, these two questions are explained not only by the legal context, but also the focus of a different legal culture, governmental policies, level of domestic and international movement, and awareness of human rights, movement ideology, and national ideology in both countries.

Layout of the chapters

Chapter 2 explores ILO Convention No.169 in relation to the Sami in Norway and the Ainu in Japan. I address a brief procedural and historical introduction of Convention No. 169 in relation to the involvement between nation states, indigenous peoples, and the United Nations, particularly focusing on how this has manifested in Norway and Japan. What kind of dialogue has there been between indigenous peoples, nation states, and the United Nation? Why does the situation of indigenous peoples in Norway and Japan differ so much on the matter of Convention No.169?

In the Japanese context, I examine the developments and politics surrounding the construction of the Nibutani Dam. The Nibutani Dam case is a good example to clarify the perspective of the Government of Japan. It indicates that the juridical system in Japan accepts and recognizes the rights of the Ainu as indigenous peoples using international law as a standard while the Government of Japan has not.

In the Norwegian context, the passage of the Finnmark Act illustrates the relationship and dialogue between the Sami, Norwegian Government at the community level, and the ILO in relation to the ILO Convention No. 169. If one uses the example of the Finnmark Act, one sees a dualistic legal system is a part of the key elements, as opposed to Japan where a monistic legal system is practiced. In describing the interview method I used, I will explain how the fact came out and what kind of dialogue indigenous peoples and nation states have had.

In comparing the case of Norway to Japan, there is a clear difference between the two countries, although both countries are internationally recognized as “highly industrialized

countries." The indigenous movement in the international arena on its own began late in Japan, which was in the 1980s. Japan claims a longer history than Norway as an independent state, which has never been colonized and practices jus sanguinus,[4] there is a strong social norm in terms of the consolidation of a race, culture, and language. Each individual is expected to find their identity in a strong Japanese spirit and culture with good manners as a Japanese citizen. This is understood to be important for Japanese society to have social solidarity and to have a better economy.

In contrast to that, Article 14 of the Constitution of Japan states:

> *"All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin. 2) Peers and peerage shall not be recognized. 3) No privilege shall accompany any award of honor, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it."*[5]

Although Article 14 of the Constitution of Japan states the above, when it comes to the Ainu issue at the international level, the Japanese government has taken the position of not accepting the Ainu as indigenous peoples, but as ethnic minority of Japan.

An interesting issue is the question of how "all of the people," which include minority groups and indigenous peoples in Japan, could be guaranteed as people who are promised to receive such a rights listed above without an official recognition of their indigenous status. Equality shall not be based on a certain force of equalizing the difference to make minority groups adoptable into a majority group in the society. In the case of Norway, it does not follow the one nation state concept, and Norway at present accepts the fact that the Sami co-exist with Norwegians, although they have a history of a policy of assimilation.

Is these differences of the notions of "the nation" they raise the question as to whether Japan's "one nation = one ethnicity" self-conception has had a negative impact overall, and whether it helps explain the different approaches to ILO Convention No. 169. I argue that there are both negative and positive sides in the story. A positive side is that it could strengthen economic

[4] Jus sanguinus (Latin for "right of blood") is a right by which nationality or citizenship can be recognized to any individual born to a parent who is a national or citizen of that state. It contrasts with jus soli (Latin for "right of soil"). http://en.wikipedia.org/wiki/Jus_sanguinis, October 22, 2007

[5] THE CONSTITUTION OF JAPAN
http://www.solon.org/Constitutions/Japan/English/english-Constitution.html, October 22, 2007

power in the country; it could give citizens loyalty to the country which increases morality, social norms, and etc.

A problem arises when the country is not constituted by a single ethnicity. In other words, if the country is constituted by various people who have different ethnic backgrounds (i.e. a multiethnic multicultural state), a problem occurs. Unfortunately, in most cases indigenous peoples the ones who fall into the category of a group of people who do not fit into the "one nation" state concept. Japan fails to recognize the Ainu in a political and cultural sense, and that the Ainu are a part of the society and are indigenous peoples who should have a voice in decisions that affect them.

What would happen if indigenous peoples in such a nation state claimed the freedom to develop and maintain their language, culture, social, and political status? The example of Japan in a comparison to Norway will the example taken to answer this question, it will be examined in Chapter 2 in the frame of a legal context.

In Chapter 3, I explore the development of indigenous discourse and the increasing political recognition of indigenous peoples. Does it make any difference in the process of the ratification of Convention No.169 when the nation states accept a concept of indigenous peoples? Secondly, does the indigenous movement in Norway and Japan serve as an explanation of a legal framework in both countries? Thirdly, how much impact has the development of indigenous discourse exerted internationally and domestically?

Chapter 3 also includes a description of the international political and social movement of indigenous peoples. The domestic movements in Norway and Japan are described as well, both of which appear to play a different role. I use the interview method in this Chapter to insert the voice of indigenous peoples themselves into the thesis.

Does it make any difference in the ratification process of the ILO Convention No. 169 when the nation states accept the concept of indigenous peoples? I argue that it does make a difference, but it requires a certain level of social, political, and legal understanding of what the term of indigenous peoples implies. The fact that the term "indigenous people" is new, it is rather difficult to harmonize the term with the one nation state concept.

It was long awaited, but indigenous political and social movement has developed and played a big role in the legal framework in both countries. Therefore, the impact of the development of indigenous discourse at the domestic and international level is evident in my arguments as to the reasons why Norway and Japan have taken different approaches to ILO Convention No. 169.

Chapter 4 focuses on the differing human rights environments in Norway and Japan, and how domestic legislation defines the rights of the Sami and Ainu in their own countries. Following a general description of the Sami and Ainu, the chapter explores what is the awareness of human rights in relation to indigenous peoples in Norway and Japan? How much protection does domestic legislation accord to indigenous peoples' rights as indigenous peoples?

I argue that an awareness of human rights could depend on the attribute of each country, such as Norway which is known to be a "human rights country" because they like to receive positive publicity in the international arena. It also depends on the legal system and government policy, which directly influences citizens. The domestic legislation provides an indicator of how the legal systems are structured or formulated in each country.

In Chapter 5**,** I offer some conclusions and discuss different scenarios in which I apply different solutions to the issues that arise between the Ainu and the Japanese state, and the Sami and the Norwegian state government.

Chapter 2: ILO Convention No. 169 in relation to the Sami, Norway and the Ainu, Japan

One of the Ainu traditional tales says:

> *"For a future Ainu, the Ainu should not be the only one who eats Salmon and dear. It is because all alive animals that also eat Salmon and dear have rights to eat them as same as the Ainu. You never think that it is not only for human beings"*[6]

ILO Convention No. 169 Procedure in relation to an involvement with nation states and indigenous peoples

What kind of dialogue has there been between indigenous peoples, nation states, and United Nations such as the International Labor Organization (ILO)? Moreover, why does the situation of indigenous peoples in Norway and Japan differ so much on the matter of Convention No.169? Following from those questions, in Chapter 2, I will make an analysis of the situation of the Sami in Norway and the Ainu in Japan on the matter of Convention No.169 by considering actual and domestic cases.

In 1989, the ILO Convention on Indigenous and Tribal Peoples, Convention No.169 emerged as the first negotiated and most recent international law by indigenous peoples that deals directly with issues of indigenous peoples after Convention No.107.[7]

In terms of the involvement between nation states, International Labor Organization, and indigenous peoples on the process of the revision from ILO No.107 to No.169, in 1986, "Meeting Experts" it consisted of representatives of the World Council of Indigenous Peoples and indigenous groups from different parts of the world who recommended the revision of ILO Convention No. 107. They stated that ILO Convention No. 107 is outdated and has been destructive in the modern world because ILO Convention No. 107 is based on the principle of integration. It also emphasized the importance of giving indigenous peoples the policies of pluralism, self-sufficiency, self-management, ethno-development, and a direct participation in the nation states, taken as an example from the study by the Sub-Commission's Special Rapporteur.[8]

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[6] Kayano 1977:168 (Translated by Kanako Uzawa)
[7] Anaya 2004: 58
[8] Anaya 2004: 58

Therefore, this process illustrates how indigenous peoples participated in the revision of ILO Convention No.107 to 169.

Convention No.169 is based on the basic principle that culture, livelihood, tradition, and customary law of indigenous peoples should be respected. Also, this means that indigenous peoples should be allowed to have a continuous existence remaining within their own identity, social structure, and tradition as a part of society in nation states.[9]

The revision on Convention No.107 was a necessary step for the United Nations and Nation States in order to be a part of humanitarian development in the international arena along with social changes. For instance, there was little political awareness of the issues of "indigenous peoples" when ILO examined indigenous issues in the 1950s, when Convention No.107 was made. In 1981, the United Nations completed a long-term study on indigenous peoples, and founded the United Nations Working Group on Indigenous Populations, that helped the International Labor Organization to facilitate indigenous participation in the revision process of Convention No.107.[10]

Although Convention No.169 was supposed to be a revised and updated text which took advice from indigenous peoples, it still has dissatisfactory language in it, according to several indigenous advocates. For example, one contentious point between indigenous peoples and nation states has been self-determination, which was still not clarified sufficiently in Convention No.169.[11]

Mr. Lee Swepston, who is Senior Adviser on Human Rights Standards and Fundamental Principles and Rights at Work Sector stated that indigenous peoples at that time thought that Convention No.169 did not go far enough, particularly about the fact that it does not include a specific reference to self-determination (Personal interview: Geneva, July 27, 2006). There was therefore no push in developed countries for the ratification coming from below.

[9] Tomei & Swepston 2002 : 16
[10] Tomei & Swepston 2002 : 16
[11] Anaya 2004 : 59

The Sami, Norway regarding ILO Convention No. 169

In 1991, Norway became the first country to ratify Convention No.169. As I discuss in greater detail in chapter 4, an awareness of human rights concepts, as well as the concept of indigenous peoples, developed remarkably in Norway beginning in the 1970[s]. Starting from the Alta case[12] onwards to an establishment of the Sami Act[13] in 1987, the Sami Parliament[14] in 1989, and an adoption of Convention No.169 in 1991 and the Finnmark Act in 2005, they are in line with the Sami political and social movement. The stance clearly indicates the reason why Norway was the first nation to ratify Convention No.169.

In terms of the involvement between the Sami and Norway regarding ILO Convention No. 169, it began when the Sami stood up to express their demands and unequal treatment from the Norwegian government. That was the Alta dam protest, and it brought the Sami to a negotiation process with the government, which had significant influence on the ratification of ILO Convention No. 169.

Mr.Einar Høgetveit, who was involved with the process at that time as a legal advisor in the Department of Justice explains that the Sami created a political climate in the late 80[s] where there was such a social atmosphere in Norway that Norway should be the first country to ratify Convention No.169. This was mainly because of the political influence of the Sami where the Norwegian Government should do something about the Sami issue in relation to the Alta case, Sami Act, and Sami Parliament. Therefore, Convention No.169 did not trigger detailed discussion on each article. The Sami were regarded as not having occupied the land in the Finnmark area exclusively, and thus were not entitled to ownership, but merely the right to use the land (Personal interview: Oslo, July 24, 2006).

Mr. Lee Swepston described how there was a big commitment from the Norwegian Government's side in the drafting process of Convention No.169, and there were very active

[12] Alta case : On August 27, 1970, some 400 Sami in the small and until then little known community of Másí in Finnmark, the northernmost county of Norway, carried banners with this and other slogans, protesting the Norwegian authorities announcement for a new and vast hydro-electric development project of the Alta-Kautokeino river, Introduction : indigenous perspective, http://www.sami.uit.no/girji/n02/en/002mibra.html, October 22, 2007

[13] I will layout the Sami Act in this text : 73

[14] Sami Parliament: The Sami Parliament of Norway is the representative body for people of Sami heritage in Norway. It acts as an institution of cultural autonomy for the indigenous Sami people. http://en.wikipedia.org/wiki/Sami_Parliament_of_Norway, October 22, 2007

advocates in the Sami Parliament. The fact is that an existence of the Sami Parliament in Norway made a big difference in how the Norwegian Government went into dialogue with the International Labor Organization (ILO) on this matter. A recognition of the Sami Parliament as a decision making body is an important factor. The whole process became more interesting after the ratification of Convention No. 169 by the Norwegian government. (Personal interview: Geneva, July 27, 2006).

Mr. Swepston's statement clarifies the fact that the Sami Parliament, run by the politically active Sami leaders, played a big role in the negotiation process with the government, and the Sami parliament and political and social movement in Norway influenced the attitude of the government.

Mr. Swepston also stated that the Norwegian government took an interesting step, shortly after the Convention came into effect for Norway. They invited the ILO to come and discuss the implementations of the ratification with a gathering of national and local-level officials. Given that no one at that time knew much about how Convention No.169 would apply in general, this was a positive development. It offered a venue for all actors, including the ILO, to sit together to discuss the application.

Mr. Swepston adds that there were no insurmountable obstacles in this process except the fact that there was no background for supervising work on this matter. The Norwegian government had to accept everything. In general, the Norwegian government has been working hard continuously to find out how to apply Convention. No 169.

According to Mr. Swepston, the only and main obstacle in the convention was Article 14[15] in relation to the land rights, which indicates a similar case in Sweden and Finland. The Norwegian government understood it in the same way as Convention No.169, namely, that the rights to the land and resources are based on traditional occupation. Also, it was required that the content of the rights have to be determined and the ratification of Convention No.169 does not require a particular form of rights. It was also generally emphasized that the Convention No.169 does apply in a flexible manner depending on circumstances.

[15] See Appendix

In terms of a dialogue between the Norwegian government and the Sami, he mentioned that there had been a dialogue before the ratification, but that it intensified after the ratification. The Norwegian government preferred that the Sami Parliament would be actively involved with the supervision of Convention No.169 about how they should report and how they are applied. ILO uses a useful space that is not always available on the domestic level.

The Sami representative from Norway, Mr. Rune Fjellheim, who works as Executive Secretary in the Arctic Council (Indigenous People's Secretariat), contended that the ratification of ILO Convention No. 169 by Norway was a direct result of the Alta Dam Protest (Personal interview: Copenhagen, September 5, 2006). The Norwegian government established the system whereby the government has to negotiate with the Sami about any Sami related matters and come to an agreement on that.

He also made a comment that the Norwegian government probably knew that ILO Convention No.169 was not in full compliance with the domestic legislation, but that they were politically prepared to take the consequence for the ratification. They were aware of the fact that they had to take responsibility to be profiled as the "forefront human rights country."

Additionally, he described the domestic reaction to the international political movement. During the period of time that the Sami were politically active in the international arena, the domestic reaction in Norway was often negative among the Sami community. Those who have traveled to international conferences were considered to be persons who wasted money and they received criticism in the community. However, the criticism was silenced when people actually saw the results of their work in the international arena. Therefore, it is important to share and inform the community about what is actually happening in the international arena.

Mr. Fjellheim concluded by stating that ILO Convention No. 169 has definitely been effective, mainly because the Sami have a tool, such as the Sami Parliament. This was obvious in the case of the recently approved Finnmark Act.[16] People feel that it is affecting their daily life. People are more conscious that they do not have to accept everything if they do not want to. The distance from the decision makers became shorter. Now, they have their own institution

[16] I will layout the Finnmark Act in this text : 19

in the local area. An awareness of ILO Convention No 169 is high in the Sami community, as well. Everybody has heard through the media, people's interaction in cafeterias, homes, and schools about ILO 169. They recognize the fact that they have rights as Sami and there is someone out there who recognizes them. There is a strong notion of who they are among themselves. Also, they are not afraid of raising their issue and contact other Sami leaders.

Sami representative, Mr. John Bernhard Henriksen, who is currently working as a consultant specializing in human rights and international law argues that the Norwegian Government was pressured after the Alta Dam case that they had to do something about the Sami issue. Some people mentioned that the process of the ratification on the ILO Convention No. 169 went too fast, but he personally thinks that it was rather good that it went fast. Article 14, which pertained to land rights, was an obstacle in the process. If you compare that to Sweden and Finland, it is a similar condition that the authorities are still considering the ratification of ILO Convention No. 169 because of Article 14 (Phone interview: November 30, 2006).

As mentioned above, the main obstacle on the issue of ILO Convention No. 169 was Article 14, which was the case for both the Sami and Norwegian government. The general and main obstacle was an interpretation of ILO Convention No. 169. It was challenging for the Norwegian government to interpret each article in a detailed manner and what kind of obligation went along with each article. Thus, there had been a debate and challenge in the process. In terms of the reporting procedure, the first report to the ILO from the Sami Parliament came after the Sami Parliament was established. In 1995, when the Sami Parliament decided to take an initiative with the Norwegian government regarding the reporting procedure, the Sami Parliament came to realize that the Norwegian government did not want to include a critical view of the Sami. It seemed more likely that the Norwegian government liked to report a good case to the ILO.

Moreover, Henriksen concluded by stating that ILO Convention No. 169 had a great impact on the Sami community and is the most important instrument that the Sami can actually use. It is not only for legal matters, but also for political and academic matters too. (Phone interview: November 30, 2006)

When you look at recent relations between the Sami and the Norwegian government after the ratification of ILO Convention No. 169 regarding the view of the Norwegian government towards the Sami, you see an interesting contrast in the statement below.

According to the Norwegian Government's 16th report on the international Convention on the Elimination of all Forms of Racial Discrimination in 2002, it illustrates the formal recognition and policy on the Sami:

> *"23. The basis of the Government's policies towards the Sami people is that the Norwegian State was originally established on the territory of two people: the Norwegians and the Sami. They both have the same right to maintain and develop their language and their culture. The aim of the Government's policies is thus not to give the Sami a special position, but to reverse the negative effects of the previous policy of Norwegianizing[17] the Sami culture."*[18]

This statement reveals the extent to which the Norwegian government still views the Sami as an ethnic minority group, but also as indigenous peoples. For instance, it is stated that the Norwegian State was originally established on the territory of two people, which are the Norwegians and the Sami, and both people are guaranteed to have the same right to maintain and develop their language and their culture. This could be interpreted to mean that the Sami are the original inhabitants of the land and have carried a different culture than the Norwegians for a longer period of time, even though it does not indicate who lived there first.

Considering the fact that Norway had already ratified ILO Convention No. 169 when they made this report in 2002, the notion behind the statement should be based on the concept that the Sami are officially recognized as indigenous peoples under the ILO Convention No. 169, and should be treated accordingly. This does not imply that the Sami should have more rights than Norwegians, but they should have a special position or rights, but they should be able to have rights to maintain and develop their life, language, and culture in their own way. It is a necessary to have a special position and attention for that reason.

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[17] The policy conducted in respect of the Sami minority in Norway was for a long time synonymous with a policy of assimilation or *fornorsking*, which literally means Norwegianisation, Minde 2005 : 6

[18] REPORT SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION, International Convention on the Elimination of all Forms of Racial Discrimination, Norway: 8, 1 October 2002 http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/8ec967dc3f7c36a0c1256d0100337408/$FILE/G0244675.pdf October 22, 07

Therefore, the term "same right" should be reconsidered. Also, it should take a different approach to reverse the negative effect of Norwegianization. In other words, the most important thing for the Norwegian Government policy on the Sami issue is to accept and recognize the actual meaning of what the term indigenous peoples applies according to standards of international law, not to remove a negative effect of Norwegianization. It is because the root of the Sami issue is deeply rooted that the issue needs to be approached in a different way.

Moreover, it is clear that the dialogue between the Norwegian government and the Sami was something that was created by the Sami political and social movement. Use of the media, Sami network, and demonstrations definitely made a significant impact on the Norwegian government, citizens, and even the international audience.

Because the ratification of ILO Convention No.169 is a product of the movement, the Sami seem to interpret the Convention strictly, and use it as a political tool to protect their rights as indigenous peoples of Norway.

Therefore, it is obvious that ILO Convention No. 169 has definitely been effective in the Sami community at the domestic level.

Finnmark Act

The Finnmark Act was adopted in May/June 2005 by the *Storting* (Norwegian Parliament). A consultation was done between the Sami Parliament as well as the Finnmark County Council and the *Storting* in the process of drafting of the Act. The adaptation process was that there was a large majority of the *Storting* party lines agreeing with both the Sami Parliament and Finnmark County Council indicating a secure democratic foundation.[19]

A foundation of the Finnmark Act is closely linked to the development of Sami law, and it provides security and opportunities for all residents of Finnmark.[20] The article of Act of 17 June 2005 No. 85 relating to legal relations and management of land and natural resources in

[19] THE FINNMARK ACT-A GUIDE : 1
http://www.galdu.org/govat/doc/brochure_finnmark_act.pdf, October 22, 2007
[20] THE FINNMARK ACT-A GUIDE : 1
http://www.galdu.org/govat/doc/brochure_finnmark_act.pdf, October 22, 2007

the county of Finnmark (Finnmark Act) states in Chapter 1 General provisions, Section 1 the purpose of the Act:

> *"The purpose of the Act is to facilitate the management of land and natural resources in the country of Finnmark in a balanced and ecologically sustainable manner for the benefit of the residents of the county and particularly as a basis for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life."*[21]

The adoptation of the Finnmark Act was remarkable result for the Sami. It also became a key element that contains many important factors relating to the Sami political movement and the ratification of ILO Convention No. 169. It is because the Finnmark Act requires the Sami to be in a consultation process in the management of land and natural resources in the area of Finnmarkseiendommen[22] ("the Finnmark Estate") if the decision could be something that effects Sami culture, reindeer husbandry and the like in uncultivated area.[23]

It was also significant because the Sami political and social movement helped to formulate solidarity among the Sami and utilize the force for the adoption of the Act. Most importantly, ILO Convention No. 169 played a big role in the process. The Sami were indeed involved in the process of the drafting together with the Norwegian government and the ILO.

Mr. Henriksen stated that in terms of land rights, the Finnmark Act is more effective because Norway practices a dualistic legal system. This means that if there is a conflict between national legislation and international law, domestic law will prevail (Phone Interview: October 22, 2007).

In that case, you could see that it is more protective for the Sami to have the Finnmark Act at national legislative level.

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[21] Act of 17 June 2005 No. 85 relating to legal relations and management of land and natural resources in the county of Finnmark (Finnmark Act) : 1
http://www.galdu.org/govat/doc/the_finnmark_act_act_17_june_2005_no_85.pdf, October 22, 2007

[22] The Finnmark Estate is an independent legal entity with its seat in Finnmark which shall administer the land and natural resources, etc. that it owns in compliance with the purpose and other provisions of this Act. See Chapter 2 section 6 in the Article of Act of 17 June 2005 No. 85 relating to legal relations and management of land and natural resources in the county of Finnmark (Finnmark Act), 2007 : 2
http://www.galdu.org/govat/doc/the_finnmark_act_act_17_june_2005_no_85.pdf,
October 22, 2007

[23] THE FINNMARK ACT – A GUIDE, 2007 : 2
http://www.galdu.org/govat/doc/brochure_finnmark_act.pdf, October 22, 2007

The Sami representative, Mr. Fjellheim, stated that the Norwegian government was under pressure at that time. In October 2003, the Norwegian Government submitted the regular periodic reports to describe the status of the implementation of ILO Convention No. 169, which naturally had a strong focus on the Finnmark Act. There were a couple key elements in the discussion between the Sami Parliament and the Norwegian government. Firstly, the Sami Parliament focused on the proposal for the Finnmark Act from the Norwegian government's side as to how it did not comply with ILO Convention No. 169. This meant that the Sami Parliament criticized the fact that the Norwegian government did not consult with the Sami Parliament on the issue of the Finnmark Act (Personal interview: Copenhagen, September 5, 2006).

The Sami parliament made the statement that the Finnmark Act proposal was not a mutual proposal. It was from the Norwegian Government's side to bring a solution for the debate on the Sami right to land and waters in Norway. The Sami Parliament also made a comment on the statement of the Minister of Justice, Odd Einar Dørum in a presentation of the proposal.[24]

> *"We have chosen to present a totally new model of our own, not based on any of the previous suggestions.(Translated by the Sami Parliament)"*[25]

The Sami Parliament states that this statement indicates that there was no consensus between the Norwegian Government and Sami Parliament. It is introduced as the Act that secures all residents rights to the natural resources in Finnmark County, but especially the non-Sami population.[26]

This statement is vague and unclear in any sense, but if it applies to the interpretation of the Finnmark Act, it could be interpreted to mean that the Norwegian government makes a governmental policy based on its structure as a one ethnic nation, not does include the consideration of both nations, the Sami and Norwegians.

Secondly, Mr. Fjellheim explained, there was a more detailed discussion about the Norwegian government not following Article 2[27], 6[28], and 7[29] in the ILO Convention No. 169 (Personal interview: Copenhagen, September 5, 2006). These articles mainly require that people

[24] Report on ILO convention 169 for the period ending July 2003, The Sami Parliament, Norway, 2003 : 5
[25] Report on ILO convention 169 for the period ending July 2003, The Sami Parliament, Norway, 2003 : 5
[26] Report on ILO convention 169 for the period ending July 2003, The Sami Parliament, Norway, 2003 : 5
[27] See Appendix
[28] See Appendix
[29] See Appendix

concerned are granted rights to participate in matters relating to their own economic, social and cultural development.

Mr. Fjellheim also mentioned that a response in 2004 from the ILO about the absence of the Sami in the negotiation process for the Finnmark Act was to request the Norwegian government to include Sami participation in the negotiation process. Until the adoption of the Finnmark Act in 2005, the attitude of the Norwegian government was positive in the sense that they expressed that they have to do something and have to negotiate with the Sami Parliament.

He finally made the comment that one of the benefits of the Finnmark Act is that local collective rights to manage themselves have now been formulated. (Personal interview: Copenhagen, September 5, 2006)

In terms of the reporting procedure, Mr. Henriksen made a comment that it makes a difference because the dialogue between the ILO, the Sami Parliament, and Norwegian Government is helpful in the implementation of ILO Convention No. 169. The ILO also asks critical questions, which is positive in terms of the criticism on the Finnmark Act procedures. The Finnmark Act was very much improved in the negotiation process (Phone interview: November 30, 2006).

Another discussion raised by the Sami Parliament was about expressing their firm position that any land rights legislation concerning Sami land rights should be ranked over the domestic legislation, even though the Norwegian legal system is based on a dualistic approach. This means that the guiding principle is that domestic legislation is to be in compliance with international law. According to a juridical principle in Norway, the domestic legislation prevails over international law when a conflict arises if there is nothing specifically stated in the Act. The Sami Parliament states that they had a strong standpoint on any land rights legislation concerning the Sami land rights. They claim that it should hold an explicit section that allows the international law prevail over the domestic legislation.[30]

In terms of the relation between the domestic legislation and international law, Norway practices the dualistic system which means that the international law is treated differently than

[30] Report on ILO convention 169 for the period ending July 2003, The Sami Parliament, Norway, 2003: 16

the domestic legislation, while Japan practices the monistic system. The monistic system does not need a separate cooperation in that sense.

In the case of Norway, Mr. Henriksen explained, the dualism is that a treaty is not part of domestic law and has no internal legal effect until its incorporation through passage of domestic legislation. If there are any conflicts between international and domestic law, a Norwegian court is not bound by international law and will apply domestic law, that is, if the convention concerned has not been incorporated into Norwegian law through an act of incorporation (Phone Interview: October 22, 2007).

A consequence of the request from the Sami Parliament was reflected in Section 3 of the Finnmark Act, Mr. Henriksen stated. He stated that the original Finnmark Act proposed by the Government did not address the issue. However, the final Finnmark Act partly solves this problem in relation to the Finnmark Act, through partial incorporation of the ILO Convention into domestic law. This solution was one of the results of the negotiations between the *Storting* (Norwegian Parliament) and the Sami Parliament (Phone Interview: October 22, 2007). In the article of THE FINNMARK ACT it states:

> *"Section 3 Relationship to international law*
>
> *The Act shall apply with the limitations that follow ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. The Act shall be applied in compliance with the provisions of international law concerning indigenous peoples and minorities and with the provisions of agreements with foreign states concerning fishing in transboundary watercourses."*[31]

This is indeed a positive result in that it is a success made by the negotiation between the Norwegian government and Sami.

Mr. Henriksen explained how the ILO Convention No. 169 was incorporated into the Finnmark Act. The first sentence of Section 3 partly incorporates the ILO Convention No.169, but it only applies to the Finnmark Act, and not to other relevant legislation. Due to the nature of the Act, including its geographical scope, the ILO Convention No. 169 is only incorporated as far as Finnmark County as far as the application of the Finnmark Act is concerned. The second sentence is ascertainment of normative harmony, or passive transformation, which is

[31] THE FINNMARK ACT – A GUIDE, 2007 : 14 See Chapter 1 Section 3
http://www.galdu.org/govat/doc/brochure_finnmark_act.pdf, October 22, 2007

the principle which guides the relationship between Norwegian law and international conventions which are not incorporated into domestic law.

He also stated that the limitation in the first sentence in Section 3 of the Finnmark Act gives ILO Convention No. 169 a stronger position in the Act, as the Sami rights should not go below ILO Convention No. 169 states (Phone Interview: October 22, 2007).

Overall, it seems that the Finnmark Act is a grassroots-based act that links residents' daily lives in the Finnmark area. Another good point about the Finnmark Act is that local people can claim their issues relating to ownership rights of their area, management of the land, and natural resources. Also, they have easier access to the Sami institution to make a claim as it is located locally.

The Ainu, Japan regarding ILO Convention No. 169

The year 1987 was a historical year for the Ainu to present their existence to the Japanese Government and the international community. That was a year after the statement in the national Diet by the Prime Minister, Mr. Nakasone stating in 1986 that "Japan is a racially homogeneous nation."

In 1979, the Japanese Government ratified both the International Covenant of Economic and Social Cultural Rights and International Covenant on Civil and Political Rights, which has been used by the Ainu to negotiate with the Government on the Ainu issue. The Japanese Government took the position to not ratify the ILO Convention No. 107 and has not yet ratified the ILO Convention No. 169, as mentioned earlier.

In the same year, December in 1986, the Japanese Government acknowledged the Ainu "preserve their own religion and language, and maintain their own culture," but did use the term "minority" in Article 27 of the Covenant, in its second periodic report of Japan under Article 40 of the International Covenant on Civil and Political Rights to the Human Right Committee, the United Nations.[32] Remarkably enough, it indicates a contradiction in that the statement of the Prime Minister of Japan does not comply with a statement from the Ministry

[32] The Ainu Association of Hokkaido, 1994 : 1186

of Foreign Affairs. "A New Ainu Law" was already approved by the General Assembly of the Ainu Association of Hokkaido in 1984.

When you reflect on the past regarding the official statements by the Japanese Government on the Ainu issues, it is clear that the Ainu were not a political interest of the Japanese Government.

In 1980, the Japanese Government submitted the First Periodic Report of Japan under Article 40 of the International Covenant on Civil and Political Rights to the United Nations International Committee of Human Rights. It states:

> *"Article 27*
> *The right of any person to enjoy his own culture, to profess and practise his own religion or to use his own language is ensured under the Japanese law. However, minorities of the kind mentioned in the Covenant do not exist in Japan (sic)."*[33]

More than ten years after the statement above, in December 1991, the Japanese Government, the Ministry of Foreign Affairs, recognized the Ainu as minorities of Japan in the Third Periodic Report of Japan under Article 40 Paragraph 1 (b) of the International Covenant on Civil and Political Rights, but not as indigenous minority of Japan.[34] It states:

> *"Article 27*
> *1. In Japan, no person is denied the right to enjoy one's own culture, to practice one's own religion, or to use one's own language.*
> *As for the question of the people of Ainu raised in relation to Article 27 of the Covenant, they may be called the minorities of that Article, because it is recognized that these people preserve their own religion and language and maintain their own culture. The people of Ainu are not denied to enjoy the rights mentioned above as Japanese nationals whose equality is guaranteed under the Japanese Constitution."*[35]

After the official speech of the Prime Minister, Mr. Nakasone in 1986, there were many criticisms from the Ainu. Obviously, the Japanese Government paid attention to the criticism and reconsidered the policy on the Ainu. Whether the changes of the policy on the Ainu issue was a political strategy to be keen on human rights issues in the international community or not, it is still a remarkable progress from the first to the third report.

[33] The Ainu Association of Hokkaido, 1994 : 1122
[34] Teshima, 1994 : 1186
[35] The Ainu Association of Hokkaido, 1994 : 886

However, social recognition of the Ainu is still weak even nowadays in 2007, and a large population in Japan is not familiar with the Ainu issue.

On December 10th in 1992, Giichi Nomura, the former Executive Director of Utari Kyokai (Ainu Association of Hokkaido), made a speech to the United Nations General Assembly at the opening ceremony for the international Year of the World's Indigenous People below:

> *"[…]Human Rights Day, which marks forty five years since the adoption of the Declaration of Human Rights, is a day that should rightly be commemorated by all mankind. For we Ainu, who have formed a distinct society and culture in Hokkaido, the Kurile Islands, and southern Sakhalin from time immemorial, there is yet another reason today will have special significance in our history. This is because up until 1986, a mere six years ago, the Japanese government denied even our existence in its proud claim that Japan, alone in the world, is a "monoethnic nation." Here today, however, our existence is being clearly recognized by the United Nations itself. In the eyes of the government, we were a people whose existence must not be admitted. You need not worry, however, I am most definitely not a ghost. I am standing here firmly before you[…]."*[36]

This statement marked a strong and significant fact in the international arena that the Ainu– as indigenous peoples are still alive at present not just in the past or in history– by presenting their ability speak for themselves, are a living people.

Ainu organizations began participating in the United Nations conference, since 1987, which is also the year that the Japanese Government began participating in the Working Group on Indigenous Populations for the first time after having kept silent on the issue of the Ainu. Dietz describes the Ainu international movement from 1980s:

> *"In addition to their ongoing participation in both UN working groups and contribution to the development of ILO169, since the 1980s Ainu representatives have attended major conferences on indigenous issues in Asia, Oceania, North America, Greenland, Europe, Africa and Siberia. These include participation in several nongovernmental organization co-summits held in conjunction with major conferences such as the UN Conferences on Women in Nairobi and Beijing. The Japanese government started sending a representative to the UN working groups after the Ainu themselves began participating and, beginning with its third periodic report in 1991[…]".*[37]

Thus, the 1980s is the beginning of Ainu work in joining other indigenous peoples in the international arena to claim their existence and demand their rights as indigenous peoples. For the Japanese government, acknowledging the Ainu as an indigenous minority presents a threat in economic and social matters, which is directly connected to natural resource access rights, such as hunting and fishing rights in the Ainu traditional territory. Recognizing Ainu

[36] The Ainu Association of Hokkaido, 1994 : 814
[37] Dietz, 1999 : 361

indigeneity would also include cultural aspects such as giving the Ainu the freedom to teach history, language, and culture in the public schools.

In terms of the dialogue between the Ainu and Japanese Government on the issue of the ILO Convention, for example, there was a dialogue among them on the ILO convention No.107 in 1987. There is a report that still remained from 1987 about a relationship that has been carried on between the Ainu and the Ministry of Labour on the matter of Convention No.107. According to the text, *Ainu-shi* [Ainu History]:

> *"In 1987, the Ministry of Labour asked the Ainu Association of Hokkaido to present its view on the revision of ILO Convention 107, which the Association did. However, the ministry completely ignored the reply, and made a government reply to the ILO headquarters, after a two month delay, saying "Definition uncertain." This is another case of national discrimination against the Ainu people."*[38]

In 1990, the Ainu Association of Hokkaido submitted a statement on recent development in Japan to the Working Group on Indigenous Populations Eighth Session, July 23rd to August 3rd on the Agenda Item 5:

> *"[…] The government of Japan had stubbornly kept the door closed to our legitimate demand. However, in December last year, after all this delay, it was decided by a meeting of the government's permanent vice-ministers to study the "problem of new legislation concerning the Ainu people," and set up a committee for that purpose within the government, which has already met several times. We regard this as a result of our movement.*
>
> *This does not mean, however, that the basic attitude of the government of Japan has changed. The intent of the study committee is said to be to see whether or not such new legislation is necessary, not to proceed on the premise of the need for its enactment. Unable to eradicate its assimilation thinking, the government raises objections to the provisions of ILO Convention 169, and also to the proceedings of this Working Group. We cannot but wish the government of Japan and the distinguished Working Group member from the same county to join in the with the other members who have been giving an earnest and serious consideration to the aspiration of indigenous peoples. We are in constant anxiety as to whether the government of Japan will recognize us as a people and enact a law we truly wish for, as long as it is guided by the illusion that all Japanese nationals are composed of a single people, and views the Ainu people merely as an assimilated minority."*[39]

Sixteen years after this statement above, on June 26th, 2006, the Permanent Mission of Japan to the United Nations Office at Geneva addressed the issue of the Ainu to the Secretariat of the Commission on Human Rights. In 24 Paragraph 85 IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED"HUMAN RIGHTS COUNCIL states that:

[38] The Ainu Association of Hokkaido, 1994 : 1081
[39] The Ainu Association of Hokkaido, 1994 : 956 - 958

"The Government of Japan recognizes that the Ainu, who have developed a unique culture including the Ainu language as well as original manners and customs, lived in the north of Japan, especially in Hokkaido before the arrival of so-called "Wajin"[40] as a historical fact.

ILO convention No.169 provides for respect for indigenous and tribal peoples' social and cultural identity. Since the convention includes many provisions other than the protection of workers beyond the mandate of the ILO, and also still includes provisions that conflict with Japan's legislation, the convention is considered to include too many difficulties for Japan to ratify it immediately.

Since this is a situation in which the Government of Japan cannot ratify the convention immediately and finds it necessary to consider it carefully, the present situation is not one in which the Government of Japan expresses clearly whether the Ainu fall under "indigenous people" as defined in this convention or whether "indigenous people" as defined in this convention exist in Japan."[41]

As demonstrated in those official statements, from the past three decades, the Government of Japan has been taking a strong position of denying recognition of the Ainu as indigenous peoples. The only difference could be that the Government of Japan has more obligations to report their status on this matter to the United Nations. These obligations are a result of domestic and international pressure. The continuous existence of Ainu representatives in the international arena such as the United Nations has made a great impact in this matter, even though the Government of Japan has still not given a clear and reasonable reason to the United Nations nor to Ainu as to why it is not possible for them to recognize the Ainu as indigenous peoples or to ratify Convention No.169.

Mr. Swepston described the situation as being one of the general obstacles indigenous peoples face in the process of ratifying Convention No.169 is the attitude of the government, especially from African and Asian countries which do not accept a more modern understanding of the rights of indigenous peoples. Those countries do not think that, in fact, accepting indigenous people could make the country even richer. In the case of Japan, the issue of the Ainu is not highly encouraged. It is very clear, however, that the Ainu situation fits into the concept of Convention No.169 (Personal interview: Geneva, July 27, 2006).

Another challenge is that it is difficult to arrange for the government and indigenous peoples to jointly take a fresh look at the convention to determine whether they want to make any changes or ratify the convention, and even to look at the material and text for full or partial implementation, even before passing to a consideration of ratification.

[40] Wajin: Japanese (usually known as Wajin), Siddle 1999 : 68
[41] IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL, A/HRC/1/G/3, 26 June, 2006, 2006 : 13

Nibutani Dam, Hokkaido, Japan

Mr. Tadashi Kaizawa was the strong Ainu spirited leader in the Ainu community, who was a grandfather of the author, and a plaintiff of the Nibutani Dam case. He fought to preserve the Saru River and the lands in Nibutani village and left his land forever on February 3, 1992 without seeing a final decision in the case.[42] There were only two opportunities given to Mr. Kaizawa to present his statement to the Japanese Government in a process of the legal action mentioned below,[43] he stated:

> *"This concrete monstrosity has become a symbol of the environmental degradation of the peaceful land around Nibutani's Saru River. How, indeed, would it look to the Ainu ekashi and fuchi [male and female elders] who, since ancient times, lived on this land and thought always of the welfare of their descendants? We, their descendants, have been silent and obedient in the face of these evils of civilization. During this long history, we have lived through struggle and oppression, facing one thing after another. No one stops to listen to our voices because those in power want only to see results, and so the building goes on and on. I cannot predict whether or not I will live until the dam is completed, but I have resolved to build a little house on the land my ancestors left to me. When the water is dammed up, I will become a human sacrifice at the bottom of that lake. If I did not do this, I would have no explanation for my ancestors when I join them. Someone must accept responsibility for the destruction of Ainu mosir[44]. "*[45]

In 1971, the Japanese government announced its plan to construct a massive industrial park in the Ainu ancestral land, Hokkaido, Japan. The government announced it would build a large dam specifically to supply water and electricity to the industrial park. The dam would be built in Nibutani, on land sacred to Ainu people.[46]

In 1989, it was obvious that the government's massive industrial park would fail in the project, for instance, because there were no enterprises, which were supposed to use water and electricity in the park, coming into the business. This, according to the government's own stated purpose, rendered the Nibutani dam unnecessary. However, appropriation of Ainu land and construction continued, and the dam was completed in 1997.[47] The government never consulted the Ainu, nor did it conduct any impact studies regarding the short or long-term effects of the dam on the Ainu culture. The government' actions showed tremendous ignorance of and disrespect for my people.[48]

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[42] Kaizawa 1999 : 355
[43] Kaizawa 1999 : 357
[44] Ainu Mosir means the land of humans. Ohtsuka 1999 : 92
[45] Kaizawa 1999: 358
[46] Takahashi 1999 : 3
[47] Takahashi 1999 : 3
[48] Takahashi 1999 : 4

However, two Ainu activists refused to sell their land, and instead filed a lawsuit in the Sapporo District Court against the Japanese government. They claimed that construction of the dam, and the appropriation of Ainu land, violated their indigenous rights.[49] In its landmark decision in 1997, the court recognized the indigenous identity of the Ainu, despite the Japanese government's long denial of the indigenous position. The court also declared the land appropriation unconstitutional.[50] Unfortunately, the dam looms large on the Nibutani landscape, and the sacred land of the Ainu rests at the bottom of the reservoir.

The dam construction caused a wide range of problems for the Ainu. First of all, it caused considerable social and political conflict within the Ainu community, especially between those who sold their land and the two Ainu who refused to sell their land to the Government. But the fact of the matter was that many Ainu in Nibutani felt compelled to sell their land to the government because it offered a means of escaping the serious financial hardship that most Ainu experienced in the wake of the assimilation policies of the Japanese government. Overcutting of our forests by the Japanese led to flooding and erosion, making it impossible for Ainu in Nibutani to practice traditional agriculture. Forced to practice wet-rice agriculture at a time when the global economy made it difficult to make a living, many Ainu in Nibutani fell into debt. They felt they had no choice but to sell their land to the government in order to bring their children out of poverty.

The dam, like all of the Japanese government's so-called "development" projects and policies, has also had a negative impact on the ability of Nibutani Ainu to transmit their culture. Fish no longer fill the river because the dam changed the water temperature and made it impossible for salmon to swim upstream for spawning; places where Ainu used to gather wild plants disappeared; sacred sites that were central to Ainu ceremonies in Nibutani now lie under water. Many links between elder and younger Ainu were destroyed because we lost the places and activities that were central to their communication. This is a clear violation of our indigenous rights by the Japanese government.[51]

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[49] Takahashi 1999 : 3
[50] Takahashi 1999 : 9
[51] Uzawa 2001, Statement by Kanako Uzawa on the Item 4 in Nineteenth Session of the UN Working Group on Indigenous Populations July 23-27, 2001 Geneve, Switzerland
http://www.geocities.jp/indigenousnet/200119thWGIPstatementE.pdf June 24, 2007

Chapter 3: Development of Indigenous Discourse

"Life bursts into flames
the birds are singing
the grass attacks

only one thing is missing
your voice"[52]

In this chapter, I would like to make an analysis of an issue around indigenous discourse and how it has been established by an international and domestic indigenous political and social movement. Does it make any difference in the process of the ratification of Convention No.169 when the nation states accept the concept of indigenous peoples? Secondly, does the indigenous movement in Norway and Japan provide an explanation of a legal framework in both countries? Thirdly, how much impact has the development of indigenous discourse had internationally and domestically on influencing the situation in Norway and Japan?

A controversial point is whether it is an absolute necessity to have a universal legal definition to define the term for "indigenous peoples." This is because it is impossible to categorize all indigenous peoples all over the world into one single definition.

As laws and regulations form societies to make them function in a systematic way, indigenous peoples–who are integrated into other ethnic groups and the majority of people in society because of their uniqueness–are required to follow a social system with a certain definition in order to protect their rights as indigenous peoples. This means that the definition of the term "indigenous peoples," determines the existence of indigenous peoples' lives and livelihood, which is why it becomes very critical how indigenous peoples in different nation states should be defined.

Recognition of Indigenous Peoples

There is no such thing as a definition of the term "indigenous peoples" that is accepted as a definition in the universal legal system. However, a description used by the United Nations to

[52] Valkeapää, 2003

identify such groups is the so called "Cobo definition,"[53] which is used as an identification guideline.[54]

Moreover, the Special Rapporteur takes key elements that are based on the concept of historical continuity of indigenous peoples from past to present:

> *"(a) full or partial occupation of ancestral lands;*
> *(b) common ancestry among the original occupants of these lands;*
> *(c) general culture or way of life in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.);*
> *(d) language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or at the main, preferred, habitual, general or normal language);*
> *(e) residence in certain parts of the country, or in certain regions of the world;*
> *(f) other relevant factors."*[55]

Additionally, in Article 1. 2, ILO Convention No. 169 states that self-identification is the fundamental criteria to determine the groups.[56] Mr. Henriksen provides an example in his article from the Arctic region where the identification of indigenous peoples is wider, based on the indigenous self-identification and processes, which leads to State recognition of their indigenous identity.[57]

Mr. Henriksen further explained the self-identification as Sami and as indigenous is of fundamental importance. If the Sami had not identified themselves as indigenous, the Sami would have been identified as a minority by the state. The identification takes place at two levels. The Sami are recognized as an indigenous people based on internationally recognized criteria: Cobo-definition and ILO Convention No. 169 Article 1. The Sami Act again establishes criteria for who is a Sami. At both levels, self-identification (as indigenous and as Sami) is vital. Norway's recognition of the Sami as an indigenous people is a result of

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[53] Cobo definition: Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basic of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system: Indigenous people's right to adequate housing, A global overview, Office of the High Commission for Human Rights (OHCHR) 2005: 5 http://www.ohchr.org/english/about/publications/docs/indighous.pdf October 25, 2007

[54] Henriksen, 2006 : 25

[55] Indigenous people's right to adequate housing, A global overview, Office of the High Commission for Human Rights (OHCHR) 2005: 5 http://www.ohchr.org/english/about/publications/docs/indighous.pdf October 25, 2007

[56] Manuela & Swepston 1996 : 36

[57] Henriksen, 2006 : 26

international as well as national processes–through which the State has gradually accepted that the Sami are an indigenous people (Personal communication: Henriksen, October 26, 2007).
His statement indicates that the recognition of the Sami by the Norwegian Government was a gradual process. It is also important to point out that it came to be reality through an international and domestic movement.

These elements of self-identification and state recognition are closely linked to each other, which is why the situations of the Ainu and Sami are different. Therefore, self-identification is something that could be established partly and gradually by State policy towards indigenous peoples. It means that this eventually reaches an individual consciousness to recognize themselves as indigenous peoples.

International Political and Social Movement of Indigenous Peoples

After the Second World War, attention to human rights and individual equality became the central attention in international politics. The adoption of the Universal Declaration of Human Rights in 1948 was one of the products from that time, along with other international human rights instruments such as the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights in 1966.

In the 1970[s], indigenous leaders began to recognize and began to share a common concern and similar experiences relating to states invading traditional lands of indigenous peoples from all over the world. This demonstrated the materialistic Western civilization.[58]

In 1981, the U.N. Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities completed the study of "Study of the problem of indigenous peoples," which had been called for in 1970.[59]

In 1982, a Working Group on Indigenous Populations was convened by the U.N Commission on Human Rights for the first time to fulfill two mandates:

[58] Wilmer 1993 : 18
[59] Wilmer 1993 : 3

"(1) to review developments regarding the human rights of indigenous populations and
(2) to develop standards concerning indigenous rights."[60]

August 9, 1993, the United Nations declared the year as the "Year of Indigenous Peoples" which initiated the Decade of the World's Indigenous Peoples (1992 – 2002) which was then extended for a second decade.[61]

In 2002, the Permanent Forum was established as the first advisory body to the Economic and Social Council with a purpose of discussing indigenous issues related to economic and social development, culture, the environment, education, health, and human rights.

There are three clear mandates that the Permanent Forum would follow. The first is to provide expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations, through the Council. The second is to raise awareness and promote the integration and coordination of activities related to indigenous issues within the UN system. Lastly, it is to prepare and disseminate information on indigenous issues. The Permanent Forum is held annually in New York for two weeks. In addition to the mandates mentioned above, it has also became the place where indigenous people and any other people relating to indigenous issues come together and discuss issues closely. Therefore, it is also the place for making further networks as well as an educational place for many people.

Most importantly, it is a critical point in history that an official forum was established that is run by indigenous peoples themselves in an official and international institution such as the United Nations. This gives a wider window for indigenous peoples to express their voices without risking the kinds of violation they have been facing in their own countries.

On September 13th, 2007, after twenty-five years of deliberation since 1982, the United Nations Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly, which is a historically remarkable decision, following all the effort that was made by indigenous leaders, Non-Governmental Organizations, and all the supporters.

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[60] Wilmer 1993 : 3 &19
[61] International Decade of the World's Indigenous Peoples (1995 -2004) http://www.ohchr.org/english/issues/indigenous/decade.htm, October 27, 2007

This was a remarkable result and an indication that the international political and social movement of indigenous peoples actually resulted in their finding their path to stand up for protecting their identity, cultural development, and political status in their nation states. This was a great success for the movement, which was carried on for more than twenty years even though the text by itself is non-binding.

Domestic Movement of the Sami in Norway

The 1950s were a historical turning point for the Sami movement. In the beginning of the 1950 s the movement by itself was still small. In the late 1950s they slowly started to establish a foundation in ethno-political activity. The National Association of Norwegian Sami, the most important forum, was founded in 1968 that started with representatives from only five local organizations, but now has grown as the organization that consists of twenty-five local organizations representing 1,750 members.[62]

Another example from the 1950s is the establishment of the Saami Council in 1956 that covers Finland, Russia, Norway and Sweden working on Sami issues. One of the Sami representatives from Norway, Mr. Fjellheim, stated that its established aim was to work on Sami issues regardless where they are from, which slowly developed as an organization. In the late 1960s, a political principle became clear in the Sami movement. The political statement from the Sami conference in 1968 became a symbol for many Sami regardless of which political party you belonged (Personal interview: Copenhagen, September 5, 2006).

Mr. Fjellheim also stated that during the 1960s and 70s the Sami started to establish their own education system. That was also the time that Sami gained more knowledge in politics. A group of people who became highly educated and gained political and academic skills emerged in this period. Those leaders who were in their 20s and 30s had a strategy in their politics on the Sami issue. They had a strategy to work on an education and the population in order to educate other Sami that they should never forget their identity and remind them that they are Sami still belong to a large community, while also working on the land and natural resource issues. Thus, it was time for these leaders to show a way to the next generation.

[62] Minde 1984 : 10 - 11 The Saami Movement, the Norwegian Labour Party and Saami Rights http://www.uit.no/ssweb/dok/Minde/Henry/84cont.htm, October 21, 2007

Mr. Fjellheim stated, therefore, that the Sami already had a strong core politically active group when the Alta Dam issue arrived in the late 1970s which was a confrontation between the Sami and the Norwegian government over the construction of the Alta river hydroelectric power plant in 1981 (Personal interview: Copenhagen, September 5, 2006). This was something that became critically important in the Sami movement. It is critically important because it strengthened the solidarity of power in the political movement. It also brought international attention to the indigenous people in Scandinavia. This movement drew attention on the domestic level that there were Sami and Norwegian newspapers writing about a protest. The media found the interest in the movement in that it became visible for the Norwegian citizens. There was a hunger strike and many people participated in a sit-in blocking the road project. Finally, the project was stopped, but the Supreme Court of Norway ruled against the Sami, but it received international attention. [63]

Mr. Fjellheim described an atmosphere in the movement at that time where the Alta dam issue was taken two ways. One is that it was taken as an environmental issue from the environmentalists. Their point on this issue was that this industrial project could destroy nature and decrease the amount of salmon and wildlife. On the other hand, the Sami took a strong point saying that the issue is more than an environmental issue, and is an issue concerning the fact that the Norwegian government was about to implement the industrial project on the Sami land without actually asking the Sami. That is the core problem, and needed to be taken care of. The Sami won in the argument and it became a successful story because they managed to articulate the problem.

I believe that this position by the Sami made a big difference in their political movement because they managed to demonstrate their rights as indigenous peoples. This was also a moment for the Sami to demonstrate what indigenous peoples mean, and what kind of rights they should hold. Therefore, their insistence on the lack of participation processes was an efficient and strategic idea to leave a strong impression on the authority and society. Most importantly, the Sami stuck with this standpoint until the end so that this perspective had to be accepted by the Norwegian government. In other words, it was a start of developing the Sami indigenous discourse.

[63] Wilmer, 1993 : 17

FIG. 1- The Sami multiartist Nils-Aslak Valkeapää (1943 – 2001) and Ánde Somby attending the Sami hungerstrike demonstration outside the Norwegian Stortinget in October 1979. (photo: Niillas A. Somby 1979)

Mr. Fjellheim emphasized that focus and attention towards the Alta issue made a perfect platform for the Sami political movements. First, you had a grassroots movement and people received attention from the international publicity. This created a political atmosphere where the Norwegian government could not neglect Sami issues.

Another challenge for the Sami on the way to successful institutionalization was an attitude from the Norwegian government that there is no one who can actually represent the whole of Sami from the Sami side, Mr. Fjellheim said. He also stated that this led to an actual idea of establishing the Sami Parliament, and the success story is that the Sami managed to run their own self-governing body with their own people, which differ from many other countries.

Overall, it is clear that the Sami have developed their political status in Norway over the past three decades starting from the Alta Dam movement to the establishment of the self-governing body and the adoption of ILO Convention 169 as well as the Finnmark Act. This

consistent work on the recognition of the Sami as indigenous peoples domestically as well as internationally produced a remarkable result even though there are still other issues left to discuss. It also indicates an importance grassroots activity, which could possibly help formulate their own institution, education, and policy legal frame at the domestic and international level.

The impact of this continuous political and social movement greatly impacted Norwegian society, such that country representatives had to raise the Sami issue. Therefore, this social tendency began to play a big role in the process of the ratification of Convention No.169.

Domestic Movement of the Ainu in Japan

In 3.4 of Chapter 3, I would like to focus on the political and social movement of the Ainu from the 1980s to the present as seen in a legal framework. This is because the concept of "indigenous peoples" and "indigenous" are relatively new in Japan, and these terms were developed in the past two to three decades through the international indigenous movement, which of course has influenced the political and social movement in Japan. Therefore, I would like to follow the development of these concepts under the political and social movement and the legal frame during that time in Japan.

The Ainu Association of Hokkaido is at present the largest Ainu organization in Japan. It is located in Sapporo, Hokkaido and is supported by the Hokkaido and Japanese government. As of May 2007, it consisted of 3,687[64] members who are registered in family registries in Hokkaido under a certain criteria.[65] The organization facilitates social welfare, cultural events, and any Ainu-related activities while the Ainu living in the Kanto area or anywhere outside Hokkaido are not eligible to be either a member or to receive the social welfare. The organization has been involved with Ainu related issues domestically and started to focus on international arena from 1980s as mentioned earlier.

In 1930, the Hokkaido Ainu Association was formed by 130 Ainu delegates. The meeting was originally organized by an Ainu self-help organization called Kyokumeisha. This group was

[64] Ainu Association General Meeting Program, Sapporo, Hokkaido: May 2007 & Personal Communication: lewallen, October 2007
[65] I will layout it in this text : 54

formed with the purpose of discussing a revision of the Hokkaido Former Aborigines Protection Act. There were two key persons that illustrates a color of the Hokkaido Ainu Association. The first person was a British missionary called John Batchelor who formed a small movement among educated Ainu. A focus of their movement was to incorporate the Ainu into Japanese society through self-improvement. Another person was a Japanese and Hokkaido Government Welfare Section bureaucrat called Masaaki Kita who is known to be a Ainu assimilation champion by intermarriage. He managed to keep the focus on Ainu issues as social welfare, even as an agenda of the Ainu Association.[66]

Some successful Ainu ran the Hokkaido Ainu Association and believed that the assimilation and loyalty for Japan are the best future for the Ainu. They even had a thought to determine themselves as the Ainu not to be beaten by Japanese. This Hokkaido Ainu Association renamed its organization as the Association of Ainu in 1946, and changed the name again 1960 to the Ainu Association of Hokkaido, which led to become the currently largest Ainu organization in Japan, the Ainu Association of Hokkaido.[67]

Those two elements which are Christianity and acceptance of the assimilation in the Ainu community stayed a long time from the establishment of the Hokkaido Ainu Association in 1930 until 1980s when the international movement within the Ainu community started. Although Christianity was only influential among a small number of Ainu, the focus on assimilation into major Japanese society remained through the early 1980s. The early focus helps to shed light on the shift between the pro-assimilation movement, and the pro-indigenous rights movement which developed through exchange with other indigenous peoples.

The discussion of "the Ainu as indigenous peoples" was discussed officially in the legal context. For instance, in May 1984, a draft made by the Ainu Association of Hokkaido was called the New Ainu Law and later was approved by the General Assembly of the association. A couple months later, in July 1984, after the adoption, a request was made to the Speaker of the Hokkaido Assembly and the Governor of Hokkaido for the New Ainu Law to be enacted.

[66] Siddle : 1999 : 109
[67] Siddle : 1999 : 109 & Hasegawa, Personal Interview, Tokyo: 13 August 2006

Between May 1985 and March 1988, a private advisory organ of the Governor of Hokkaido, the Ainu Affairs Meeting, examined the matter.[68]

According to Mr. Osamu Hasegawa, who is an Ainu leader in the Tokyo and Kanto region[69] and is the representative of the Association Rera in Tokyo, states that the draft for the New Ainu Law was made in 1987 by the Ainu Affairs mentioned above. The Ainu representative from the Ainu Association of Hokkaido and a Japanese expert was involved with this process to examine the enactment of the New Ainu Law.

However, the draft was significantly revised from what was originally submitted to the Hokkaido Prefectural legislature and later to the Ainu Affairs meeting. The committee decided to revise the content of the draft so that it would be easier to ensure government support. There were mainly two of the most important elements which were deleted from the original draft adopted by the Ainu Association of Hokkaido in 1984 as below.

(1) A guaranteed post for an Ainu representative in the National Diet
(2) Establishment of the Ainu Independence Fund including cash compensation for the Ainu from the Japanese government

Moreover, the original draft in 1984 was something that held a fundamental element to remain as indigenous peoples such as "Ainu are indigenous peoples," and "The Hokkaido Former Aborigines Protection Act in 1899 was an ethnically discriminatory law for the Ainu so that the Japanese government is responsible for the historical recognition of the Ainu" (Personal Interview: Tokyo, August 13, 2006).

Meanwhile, there was a demonstration for the enactment of the New Ainu Law during this period. Mr. Hasegawa mentioned that he also organized demonstrations at least three times where there were hundreds of people in Tokyo. He also stated that there was not such a deep understanding of the content of the draft, but the Ainu living in Tokyo area had hope that the law could make changes in their life, and that maybe they would be also able to receive the welfare service as do the Ainu living in Hokkaido. This was critical for the Kanto Ainu,

[68] the Ainu Association of Hokkaido 1994 : 842
[69] Kanto Region : The Kantō region (*Kantō-chihō*) is a geographical area of Honshu, the largest island in Japan.Kanto Region, http://en.wikipedia.org/wiki/Kant%C5%8D_region, October 31, 2007
[69] Charanke : A discussion in the Ainu language (Hasegawa, Personal Interview, Tokyo: 13 August 2006)

because they were mostly forced to migrate to urban areas due to economical reasons. A lower percentage of the Ainu have received adequate education compared to the Japanese as well as the existing problem of discrimination, their situation has become increasingly difficult.

FIG. 1 - Mr. Osamu Hasegawa at the *Icharupa*,[70]ceremony in Tokyo Japan, 13 August, 2006, (Photo: Kanako Uzawa, 2006)

Taking these requests into consideration, the Japanese government created an informal gathering for the measurement towards the Ainu from July 1995-97 for considering the New Ainu Law which was made up of Japanese politicians. The Ainu were not in a member of the gathering, even though there was one Ainu politician serving in the Diet at that time.

Mr. Hasegawa concluded by saying that overall, the reaction from the Ainu side to the revised draft was still positive. They believed that "it is better than nothing." This movement continued until 1996, a year before the adoption of the Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu

[70] Icharupa : the Ainu traditional ceremony to hold a memory for their ancestor (Hasegawa, Personal Interview, Tokyo: 13 August 2006)

Culture (hereafter Ainu Cultural Promotion Act) abbreviated as the Ainu Cultural Promotion Act.

In 1997, as a result of the movement, the Ainu Cultural Promotion Act was enacted, which turned out to be something completely different from the one from 1984, or from 1987.

The year 1997 was historic for the Ainu as a consequence of the political and social movement. Another historical event besides the enactment of the New Ainu Law was the decision of the Nibutani dam court case. The court recognized the indigenous identity of the Ainu, despite the Japanese government's long denial of our indigenous identity. The court also declared the land appropriation for dam construction unconstitutional.

Ironically, the government response and the juridical response to the Ainu issue became in contrast to each other. While the juridical system recognized their indigenous identity, the Japanese government wanted to keep the Ainu as an ethnic group that is dying out and that needs assistance in order to promote and protect "traditional culture," not to promote an effort to enhance or develop the Ainu culture as an existing indigenous group in Japan.

1997 was also a year that young Ainu started to develop their identity in a different way beyond simply cultural preservation activity. Some Japanese legal professors and experts, as well as human rights activists, started to give them an opportunity to learn about their situation in on a larger scale. Those experts conducted a once a month study group in Tokyo to teach the so-called "indigenous issues." It started with a better understanding of human rights issues, minority and indigenous rights issues, and even the United Nations system and how the indigenous issue has been dealt with in the United Nations system and international arena. The study group consists of a few Ainu and Japanese, who have an interest in indigenous issues, including the author, trying to grasp both who we are and what indigenous peoples mean. This gave hope to the young Ainu that "there is something we may be able to do."

This small, but consistent effort that has carried on for about ten years led young urban Ainu to the United Nations to present themselves and their situation. After ten years, young Ainu who were only twenty years old became people who could present their claim by themselves. This cooperation between the Japanese experts and Ainu deeply impacted the Ainu political

movement. This created another generational path in knowledge and strengthened solidarity among the young Ainu.

Finally, September 13, 2007 was the historical day that the General Assembly in the United Nations adopted the DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES.[71] The most remarkable part in this process on the issue of Japan was the position of Japan which stated;

> *"TAKAHIRO SHINYO (Japan) said that his delegation had voted in favour of the Declaration. The revised version of article 46[72] correctly clarified that the right of self-determination did not give indigenous peoples the right to be separate and independent from their countries of residence, and that that right should not be invoked for the purpose of impairing the sovereignty of a State, its national and political unity, or territorial integrity. The Japanese Government shared the understanding on the right and welcomed the revision.*
>
> *Japan believed that the rights contained in the Declaration should not harm the human rights of others. It was also aware that, regarding property rights, the contents of the rights of ownership or others relating to land and territory were firmly stipulated in the civil law and other laws of each State. Therefore, Japan thought that the rights relating to land and territory in the Declaration, as well as the way those rights were exercised, were limited by due reason, in light of harmonization with the protection of the third party interests and other public interests."*[73]

On the 1st and 2nd of October, 2007 right after the adaptation of the Declaration, the Ainu Association of Hokkaido requested that the Japanese government recognize that the Ainu fit into the category of indigenous peoples under the U.N. declaration. Also, the association made a request to establish comprehensive measures, including new legislation, to improve the lives of the Ainu.[74] According to the Article of the Resource Centre for the Rights of Indigenous Peoples, it states that the association said:

> *"It has been an international trend to guarantee the rights of indigenous peoples, who have been deprived of their intrinsic culture, their place to live and their means of livelihood in the process of building modern states."*[75]

Moreover, the prime minister of Japan, Mr. Fukuda states in Hokkaido Shimbun in October 4, 2007:

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[71] See appendix
[72] See appendix
[73] GENERAL ASSEMBLY ADOPTS DECLARATION ON RIGHTS OF INDIGENOUS PEOPLES : 8 - 9 http://www.un.org/News/Press/docs/2007/ga10612.doc.htm October 22, 2007
[74] Japan: Ainu People Seeks Indigenous Status, http://www.galdu.org/web/index.php?odas=2261&giella1=eng, November 1, 2007. See also Article "Recognize the Ainu as indigenous peoples," on 3 October, 2007, Hokkaido Shimbun Press
[75] Japan: Ainu People Seeks Indigenous Status, http://www.galdu.org/web/index.php?odas=2261&giella1=eng, November 1, 2007.

> *"I recognize the fact that the Ainu are an ethnic group who has developed a unique culture, but it is not a situation to make a conclusion on whether or not the Ainu are indigenous peoples defined in the Declaration."*[76]

I believe these statements are a product of the Ainu political and social movement at the domestic and international level. It is because it is clear that the position of Japan on the issue of the Ainu has been softening, although they still hold a position of not accepting the Ainu as an indigenous people. Especially, the fact that the Japanese Government showed an understanding of article 46,[77] which talks about a clear description of what self-determination implies in the declaration because this part of the rights issue has been a fear for the Japanese Government. Considering that Japan has a strong one nation state concept and at some point in the past they even denied the existence of the Ainu, it is a big change in indigenous politics in Japan.

Influence of Indigenous Discourse

Globalization has influenced the indigenous community in that it allows us to attend such an international meeting where you present yourself and make a claim and you even share the same experience with other indigenous peoples from the other side of the world. It also helps to disseminate information and knowledge quicker and wider, which is a new and fundamental phenomenon, and to help indigenous peoples develop networks. The term "indigenous peoples" has been developed in a few decades through the international indigenous movement, such is a product of globalization. The terms "indigenous and indigenous peoples" have become global terms, even though they are indefinite terms, but used in legal contexts. They created a new category to formulate and unify indigenous peoples in the world. It helps indigenous peoples for us and nation states to recognize rights as indigenous peoples in a larger scale.

It is ironic that the global phenomenon is utilized more positively to unify information, network, and disseminate knowledge in indigenous communities, as often globalization is interpreted as being responsible for destroying indigenous peoples' livelihood. A negative part in this story is that there are always some indigenous peoples who could be excluded from the global term of "indigenous peoples."[78]

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[76] 10 years of indigenous peoples, News No 138, 10 years citizen network of indigenous peoples, 2007 : 2
[77] See appendix
[78] Ronald Niezen, 2003 : 3

When you compare the Sami movement with the Ainu movement, the phenomenon of globalization has exerted the opposite influence, in terms of the term “indigenous peoples.” The Sami movement started domestically and gradually gained the power to be spoken of as “indigenous peoples” in Norway. The movement was so powerful and visible that it even received international attention.

On the other hand, in the case of the Ainu in Japan, the recognition of and appeal for the Ainu to be recognized as “indigenous peoples” came rather from the international movement, instead of from a domestic context. The international activity of the Ainu Association of Hokkaido, Ainu youth, and Japanese experts on the indigenous issue intentionally worked to promote global indigenous issues by having a seminar and study group. A lobbying activity at the conference in the United Nations from the Ainu representative to the Japanese government seemed also to put some pressure on for a response to the Ainu issue from the government side. A Japanese media also showed an interest in the development of indigenous activity or so called “indigenous discourse.”

Therefore, the Sami case was more of a source for the indigenous movement, and the Ainu were more receivers of the movement, in terms of indigenous discourse. Nevertheless, indigenous discourse has had a great impact on the social norms and attitudes towards indigenous issues both in Norway and Japan.

In terms of the Sami and Ainu efforts to create political organizations to lobby for their rights, it is interesting to see that the Ainu Association of Hokkaido was established much earlier than the Saami Council, but the Sami managed to establish the political platform where they could stand for themselves. It seems that the development of political organizations in the Sami community facilitated the development of the indigenous discourse. These institutions played an important role in sending a political message to the international arena and in receiving and disseminating information to the Sami community.

Therefore, I could conclude that it definitely makes a difference if nation states accept the concept of indigenous peoples, but indigenous peoples must have their own institutional infrastructure, which can represent their voices and provide them with the ability to negotiate with nation states in an equal manner.

Chapter 4: Protection of rights for indigenous peoples in Norway and Japan

"Here there is a little of everything
and if you have eyes to see with
you do not need to search

Northern lights flare up
ice pearls ignite
mountain fox tracks decorate the tundra
and every new day you wake up
to the laughter of ptarmigans

This that they call the dark season"[79]

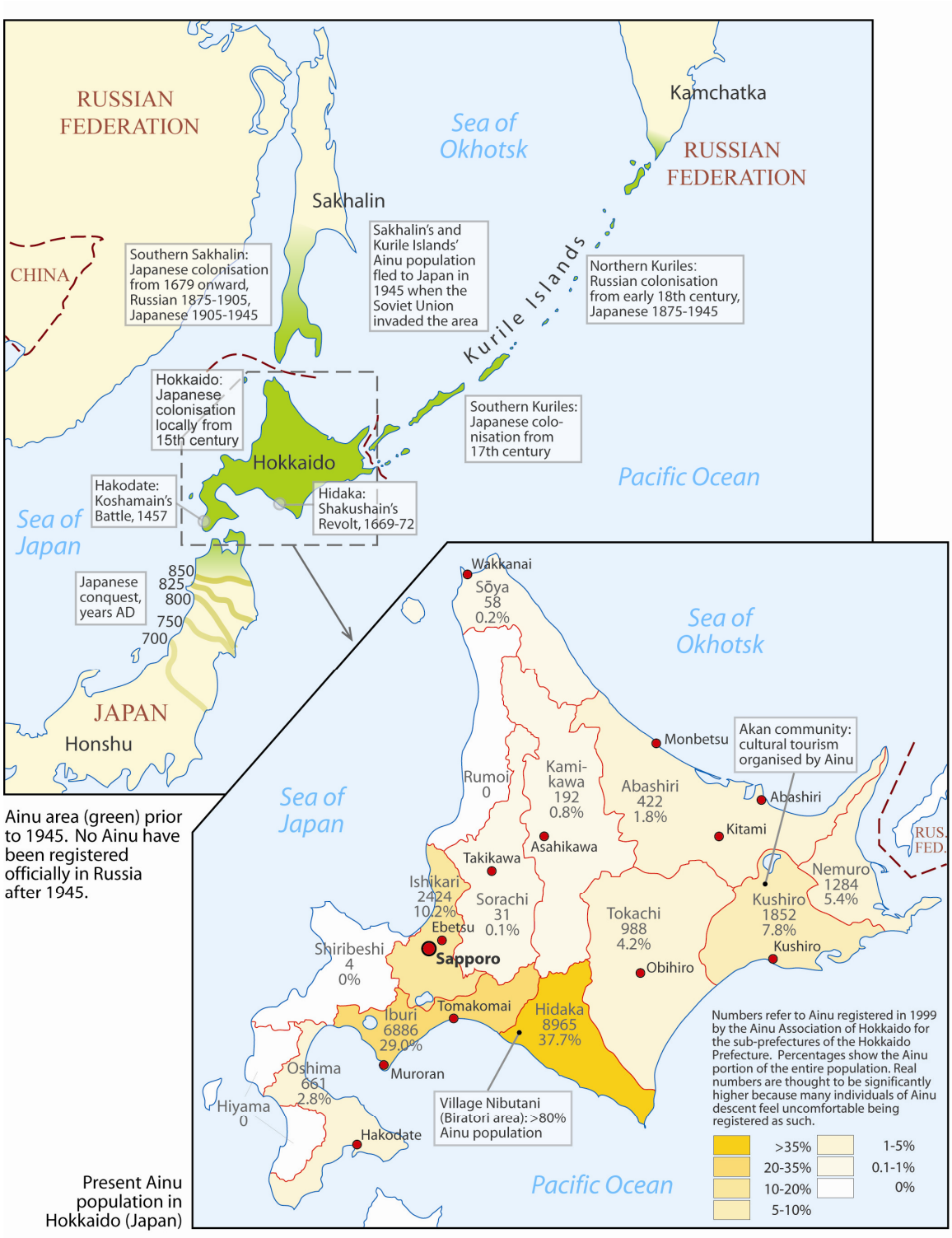
Chapter 4 starts with a general social and political description of the Sami and Ainu. Secondly, a main question starts with: How is the awareness of human rights in relation to indigenous peoples in Norway and Japan? How much protection does the domestic legislation give rights to indigenous peoples as indigenous peoples?
In 1.2, it illustrates a different human rights condition in Norway and Japan. In 1.3 and 1.4, I have taken domestic legislations from Norway and Japan to explain how the domestic legislation defines rights of the Sami and Ainu in their own countries.

Social and Political Conditions in Japan and Norway

Japan

Ainu territory stretches from Sakhalin and the Kurile Islands (now both Russian territories) to the northern part of present-day Japan,[80] including the entire island of Hokkaido, which constitutes 20% of Japan's current territory.[81] The greatest portion of Ainu land was unilaterally incorporated into the Japanese state and renamed Hokkaido in 1869.[82] It seems to be common knowledge that, although most Ainu still live in Hokkaido, over the second half of the 20th century tens of thousands migrated to Japan's urban centers for work and to escape from the more prevalent discrimination in Hokkaido.

[79] Valkeapää, 2003
[80] Fitzhugh 1999 : 10
[81] See this text : 53
[82] Kikuchi : 1999 : 74



Maps showing the historical and present distribution of Ainu in Japan and the Russian Federation.
Data compiled by K. Uzawa and W.K. Dallmann, drawn by W.K. Dallmann, Tromsø 2007

According to the research done by the Japanese Government, Japan's total land area is 377,819 square kilometres. Japan comprises of 6,852 islands. There are mainly four major

islands such as Honshu (227,909 square kilometres), Hokkaido (77,979 square kilometres), Kyushu (36,719 square kilometres), and Shikoku (18, 294 square kilometres).[83]

In terms of the Ainu population, it is rather difficult to have an exact statistic, but the statistic introduced by the Hokkaido Government states that the Ainu population living in Hokkaido is 23,782 according to the 2006 Hokkaido Survey of Ainu livelihood. The survey was conducted in 8,274 households in 72 cities. A criterion for the identification of the survey was for those who believe they have Ainu ancestors, or for those who live together with the Ainu due to a marriage or adoption. Nevertheless, the self-identification was a definite criterion, even though they have Ainu ancestors.[84] However, this survey only covers the Ainu living in Hokkaido, not other areas of Japan.

Moreover, in general, it seems to be a common knowledge that the Ainu population who are mixed with Japanese is about 25, 000 to one million persons. This is an estimated population, which is claiming the higher number of Ainu in the population. This has become a political move and does not reflect the personal identity of all Ainu. It is rather that this number allows Ainu activists to claim greater membership in the Ainu community to force government attention to their issues. There is also a trend in younger generation that it is fashionable to be the Ainu so that some people claim themselves as the Ainu without any background. This seems to create a friction in the Ainu community because it is considered crucial to have a background or community recognition to identify yourself as the Ainu. The self-identification seems not enough to present your Ainuness in the community. This becomes problematic as many people have a mobile life style. In this way, a collectivity in the Ainu spirits still stays, but collides with a modern way of life.

Considering that the Japanese Government has not recognized the Ainu as an indigenous people, neither the Japanese Government nor the Hokkaido Government have agreed upon a national standard for evaluating membership in the Ainu community or Ainu identity. However, there are some standards that have been shared among the Ainu Association of Hokkaido as the largest national organization for Ainu-identifying persons. However, Ainu

[83] Introduction (to the Constitution of Japan) : http://www.mofa.go.jp/policy/human/race_rep1/intro.html, October 22, 2007
[84] 2006 Hokkaido Survey of Ainu Livelihood, Hokkaido Prefecture 2006 : 3 http://www.pref.hokkaido.lg.jp/NR/rdonlyres/A7397AEA-716C-4CC9-A796-531A4458C2D5/0/H18houkokusyo.pdf October 27, 2007

Association membership is limited to Ainu living in Hokkaido, as mentioned earlier these criterions for identifying Ainu membership are only standard practices within the organization. There are three major criterions: 1) birth to Ainu parents (one or both); 2) adoption by Ainu parents or grandparents, 3) marriage to an Ainu spouse to be "true Ainu," nor those who have been adopted by Ainu families. In order to be accepted as an "authentic Ainu" by the Ainu community, a person must carry Ainu blood, which continues to retain importance as a marker of Ainuness among most openly Ainu-identified persons today. One major difficulty with these criteria is that there are many Ainu who have Ainu heritage or "Ainu blood" (i.e. who are born to Ainu parents), but do not identify as Ainu. Some Ainu-identified persons refer to these Ainu as "hidden Ainu." Unfortunately, most Ainu fall into this category because of ignorance, discrimination, and prejudice. (Personal communication: Lewallen, October, 2007)

The Japanese Government does not conduct population surveys using ethnic criteria, so the ethnic make-up of Japan is not clear. The 2006 survey by the Hokkaido Government is likely to under-represent the actual size of the Ainu population for several reasons. First, as mentioned above, the 2006 survey did not cover every area in which Ainu reside. Second, it is difficult to provide an accurate number of the Ainu population in Japan since many of them remain reluctant to reveal their background on account of lingering prejudices. Another challenge is to define who is an Ainu and who is not, as most of them are mixed with Japanese and have moved to different regions for various reasons.

Alot of Ainu culture, such as language, handicrafts, religious beliefs and ceremonies have survived into modern times, despite the exploitation of the Ainu and their lands during the Tokugawa Feudal[85] period, which ended in 1868. It was because of political restriction from the shogunate[86] and its local Ezo (Hokkaido) governors, the Matsumae clan, that Japanese immigration was not allowed into the *Ainu mosir*-the Ainu homeland, located in the northern part of Japan. This restriction was enforced to protect the highly profitable monopoly of the Matsumae clan from other Japanese competition, rather than insuring protection for the Ainu

[85] Tokugawa Feudal : The Edo period(Edo-jida), also called Tokugawa period (Tokugawa-jidai), is a division of Japanese history running from 1603 to 1868. Edo period, http://en.wikipedia.org/wiki/Edo_period, October 28, 2007

[86] Shogunate : A shogun's office or administration is known in English as a "shogunate" or in Japanese as a bakufu, the latter of which literally means "an office in the tent", and originally meant "the house of a general", then suggests a "private government". Shogun, http://en.wikipedia.org/wiki/Shogunate, October 28, 2007

or their culture. A harsher blow to the Ainu came when the traditional land named "Ezo" was changed to "Hokkaido" during the Meiji Restoration[87] creating the modern nation of Japan.[88]

The Japanese Government established a modern nation state during the Meiji Restoration, which was from 1868 to 1921.[89] This was the time that an aggressive assimilation policy meant to assimilate the Ainu to Japanese culture and education system started.[90]

During the Meiji Restoration, in 1899, the Hokkaido Former Aborigines Protection Act was enacted by the Meiji government. The Ainu were forced to be farmers on poor land allotted to them by the Japanese government, which ended unsuccessfully.[91] Also, they were only allowed to go to boarding schools to learn technical skills necessary for physical labor, and the use of the Ainu language was strictly prohibited. Therefore, it was very difficult for the Ainu to get jobs since they were not trained in terms of Japanese economic thinking. These two elements, which were unsuccessful agriculture and difficulty in the job market, brought severe economic hardships.

On July 1st, 1997, the Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture (Ainu Cultural Promotion Act)[92] was enacted.[93] As this legislation was limited to the promotion of Ainu culture and language, many Ainu were dissatisfied with it. It also failed to make a binding resolution to recognize the Ainu as indigenous peoples or to recognize their rights as an indigenous people of Japan.[94]

Today, the Ainu continue to face oppression at both the institutional and individual levels. Despite the Japanese government's insistence that Ainu enjoy rights as Japanese citizens, the

[87] Meiji Restoration: In Japanese Meiji-ishin, also known as Revolution, or Renewal, was a chain of events that led to enormous changes in Japan's political and social structure. It occurred in the later half of the 19th century, Meiji Restoration, http://en.wikipedia.org/wiki/Meiji_Restoration, October 28, 2007
[88] Ohtsuka, 1999 : 92
[89] Meiji period, http://en.wikipedia.org/wiki/Meiji_period, October 28, 07
[90] Ohtsuka : 1999 : 92
[91] Tsunemoto : 1999 : 366
[92] Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture, See also http://www.frpac.or.jp/eng/e_prf/profile06.html, October 22, 2007
[93] Tsunemoto 1999 : 366

[94] I will layout Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture in this text : 76

government's persistent denial of their indigenous identity prevents the Ainu from exercising their indigenous rights to self-determination.

The survey conducted in 2006 by the Hokkaido Government shows that discrimination or difficulty caused by the earlier assimilation in the statistics, 16.8 percent of the Ainu interviewed stated that they have had the experience of being discriminated against. 13.8 % of the Ainu answered that they know someone who has experienced being discriminated against. The most common area for discrimination was at work (39.1%). The next one was at school (21.7%) and 17.4% was in their relationships. The survey also indicated that 93.5% of Ainu children went to high school, compared to the local average of 98.3%. When it comes to the university level, the difference is much more marked: only 17.4% of Ainu youth attend university, while the general average is 38.5 %.[95]

Norway

The Sami population has stretched across the four countries of Sweden, Finland, Russia and Norway. An exact statistic of the Sami population is a methodological problem because of the earlier nation state policies of Sami assimilation and repression.[96] This means that there is a difficulty among the Sami whether they like to identify themselves as the Sami or not due to the assimilation history.

[95] The 2006 Hokkaido Survey of Ainu Livelihood, http://www.pref.hokkaido.lg.jp/ks/sum/soumuka/ainu/jittai.htm, October 28, 2007
[96] Josefsen 2004 : 6

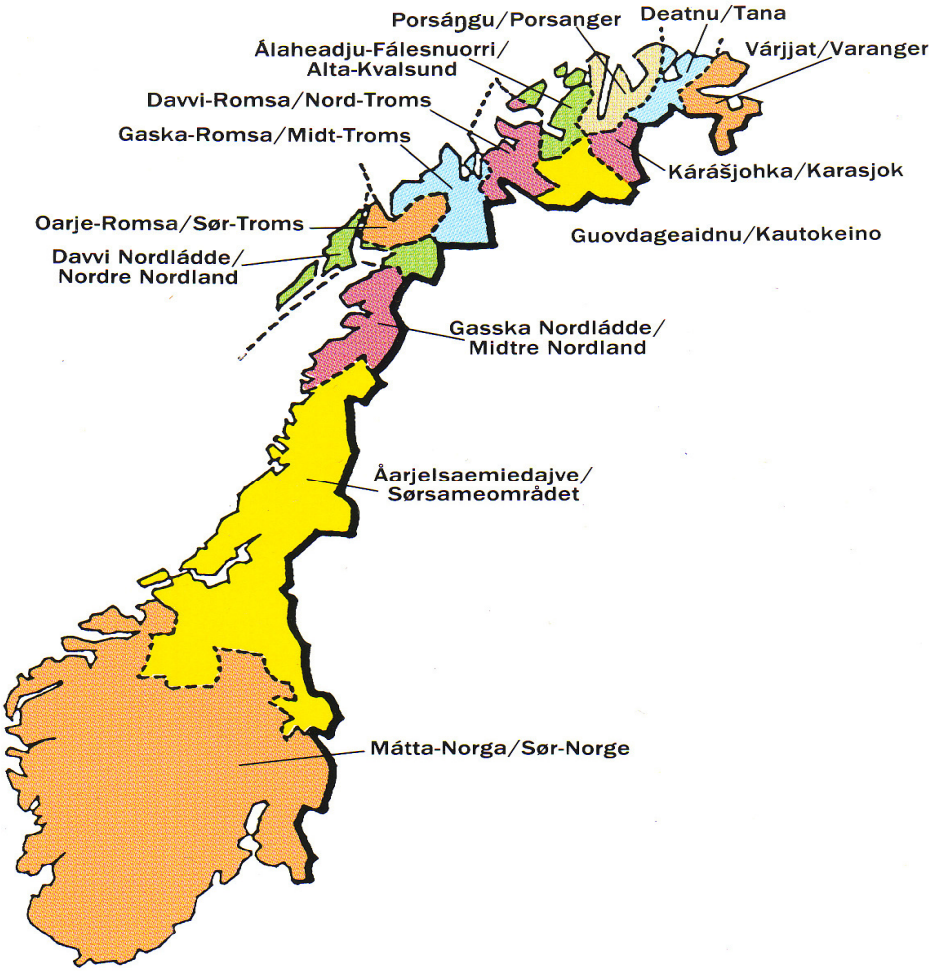


FIG.-3 Current 13 electoral districts for the Norwegian Sami Parliament

However, according to Eriksson, it indicates 5,000 – 6,500 Sami live in Finland, 17,000 – 20,000 in Sweden, about 2,000 in Russia and 40,000 – 45,000 in Norway.[97] The Sami are a minority in a the whole of the area except in the Kautokeino and Karasjok municipalities in Norway, and the Finish municipality, Utsjoki, where it is mostly populated by the Sami. Other areas populated by Sami may exist, but no inquires on the matter have been conducted. It also states that there is less than 10 percent of the Sami who are making their livelihood in reindeer herding[98].

It seems to be common knowledge that even though the assimilation policy towards the Sami no longer exists, the consequence of the earlier assimilation is still evident in different social environments. For instance in the job market, many Sami women lately have had the tendency

[97] Eriksson 1997 : 78
[98] Josefsen 2004 : 6

to receive a higher education and are moving to the bigger cities to get into the general labour market because of a change of accepting cultural values, or simply because of a financial condition, while some Sami men are struggling to remain in the reindeer herding culture. It is very challenging to remain due to various reasons, for instance, ecological change such as a global warming, although some depend on agriculture, fishing and wilderness industries. Industrialization has been an obstacle for there to remain a good condition for the Sami to keep their identity and culture.

In terms of industry, on a national level, reindeer husbandry is small. However, it is considered to be important in some areas, where it constitutes the Sami cultural traditions while at the same time it is ensuring the traditional life-style and employment levels.[99] That industry has always been considered important to the Sami, especially to the small and scattered Sami population in the south, where it is regarded as the material basis of the culture[100].

Moreover, in the legal frame, this industry as a part of the Sami culture and way of life, is considered important, for instance, it is obligated that the Norwegian Government to protect the Sami reindeer husbandry under 110a of the Constitution of Norway[101], ILO Convention no.169 and Article 27 of the international Covenant on Civil and Political Rights.[102]

[99] Norway's Report to the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, which is submitted on 14.03.2003 : 7 in Chapter 3 http://www.regjeringen.no/upload/kilde/krd/rap/2003/0021/ddd/pdfv/172587-reportonthesituationofhuman_rights.pdf, October 23, 2007

[100] Norway's Report to the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, which is submitted on 14.03.2003 : 7 in Chapter 3 http://www.regjeringen.no/upload/kilde/krd/rap/2003/0021/ddd/pdfv/172587-reportonthesituationofhuman_rights.pdf, October 15, 2007

[101] Article 110 a: It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life. The Constitution, http://www.stortinget.no/english/constitution.html, October 29, 2007

[102] Norway's Report to the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, which is submitted on 14.03.2003 : 7 http://www.regjeringen.no/upload/kilde/krd/rap/2003/0021/ddd/pdfv/172587-reportonthesituationofhuman_rights.pdf, October 15, 2007

FIG. 4 - A Sami reindeer herder on his snowmobile on the tundra.
(Photo: Niillas A. Somby 1979)

The assimilation policy in Norway, so called Norwegianization, stretches from about 1850 up to 1980 roughly. There are two critical and historical events that remarks on the Sami condition in Norway. The first one was when *Storting* (Norwegian Parliament) established *Finnefondet* (the Lapp fund) in 1851. This was a special item to make some changes in culture and language in the national budget. Second was the Alta controversy of 1979 – 81, which has already been mentioned in this text. This became a symbol to represent the Sami domestic movement against cultural discrimination and injustice carried out by the nation state.[103]

The policy of assimilation, the Norwegianization, was introduced under a system where conflict was felt among the Sami student and teachers because the assimilation policy was conducted by force to the students. This caused many difficulties and trauma to Sami students to express their identity. The language became the main focus in the assimilation process, and that appeared to represent the failure or success of the Norwegianization policy later on.[104]

The 19th century was a century where many of the dominant or majority groups in society tried to rank themselves with differences and similarities with other kinds of groups in society such as ethnic minority groups and indigenous peoples due to various reasons, but mainly to unify the power into one nation. In this aspect, the assimilation policy, Norwegianization, was

[103] Minde 2005: 6 - 7
[104] Minde 2005: 7

not something significantly different from the ideology of other nation states, but clearly was something continuous and long-lasting. This is the core of the current social condition that explains why the Sami in Norway have achieved a certain level in terms of rights of indigenous peoples.

Meanwhile, when you focus on the consequence of the assimilation towards the Sami that has been evident up to the present, there is a difference between Sami from the inland and Sami from the coast areas, which might be another reason why the Sami have become successful in the political arena. Nilsen explains that the coastal Sami in relation to a usage of resources and livelihood:

> *"In the Scandinavian welfare states, there has been a clearly stated policy of assimilation minority groups, including the Sami minority indigenous people in Finland, Sweden, and Norway. The coastal Sami population has been hit so hard by the Norwegian state policy of norwegianisation because, firstly, they have based themselves on the same kind of use of resources and the same means of livelihood as other coastal Norwegians. And secondly, the sea Sami have become integrated into the Norwegian welfare community over the course of many decades, and have taken part in the generally developing prosperity in Norwegian society."*[105]

Minde also explains an effect in the Coast Sami by the Norwegianization:

> *"It appears as relatively certain that the norwegianisation policy succeeded in reaching its goals in the [transitional districts], i.e. in the Coast Sami districts, at any rate with regard to the objective of a change of language, and partly a change of identity. The consequences of the norwegianisation process were individualized and in part associated with shame*."[106]

According to Nilsen's statement, the reason the coastal Sami was hit so hard was because the Sami were based on the same kind of resource use and livelihood as other coastal Norwegian. I am not certain if the coastal Sami were based on the same kind of livelihood if they had a distinct culture in terms of housing, clothing, language and ceremonial custom. It might be true that the resource for living was similar for the Sami and for the Norwegians as they both lived in the coastal area. This means that there must be more interaction and cultural sharing between the Sami and Norwegians.

On the other hand, the fact that the inland Sami had a quite distinct culture as reindeer herders might have somehow limited the interaction between the Sami and Norwegians. This factor might have influenced the degree of assimilation on the coastal Sami and inland Sami later on.

[105] Nilsen 2003: 164
[106] Minde: 2005: 30 - 31

Moreover, as Minde states above, the Norwegianization policy, the assimilation, reached its goal to change the Sami language and identity in the Coast Sami districts. It is a big loss for indigenous people who depend on an oral tradition.

It indicates the significant difference between the inland Sami, who are often associated with Sami culture, and the coastal Sami influenced by the assimilation. Therefore, while the coastal Sami have been hit so hard by the assimilation policy, the inland Sami might have been left out from the strong assimilation, which led to the fact that they managed to remain Sami leaders or people who still carry a strong Sami identity and Sami culture. This fact could be one of the reasons why the Sami successfully managed to keep good leaders for the community.

Furthermore, Minde states another aspect of young Sami generation is influenced by the western world:

> *"This change of attitude towards the Sami as an indigenous people reflected the changing ideological climate that took place in the youth culture of the western world, especially in university environs. The young Sami generation was caught up in this development, through the general effort to improve the schooling system that was undertaken by the Nordic welfare states. An increasing number of young Sami people began to study at the old universities in south throughout the 1960s and 1970s, in Norway as well as Sweden and Finland. A new generation of Sami politicians were inspired by ideas of equality and the right of self-determination, such as those set down in declarations of human rights and conversations […]."*[107]

The element of being influenced by the western world does not necessary mean something negative. As stated above, new generations of Sami politicians were inspired by a concept of equality and the right of self-determination. I believe that this was another element that helped young leaders to take a step forward in the international arena to be able to be a part of negotiation process with nation states on the matter of indigenous politics.

[107] Minde 2003: 80

Awareness of Human Rights in Japan and Norway

Japan

First of all, I would like to frame the legal setting of fundamental Human Rights in the Constitution of Japan in order to draw a whole picture of the Human Rights system in Japan.

According to the Japanese Ministry of Foreign Affairs, the principle of people's sovereignty is at the foundation of the Constitution of Japan, which is the supreme law in Japan's legal system. Two other important pillars are respect for fundamental human rights as well as pacifism.[108] The Japanese Government states:

> *"The fundamental human rights guaranteed by the Constitution are "conferred upon this and future generations in trust, to be held for all time inviolate" (Article 97), and the philosophy of respect for fundamental human rights is clearly shown in Article 13, which provides that "all of the people shall be respected as individuals." The fundamental human rights include: (1) civil liberties such as the right to liberty, the right to freedom of expression, thought, conscience and religion; and (2) social rights such as the right to receive education and the right to maintain the minimum standards of wholesome and cultured living. Paragraph 1 of Article 14 of the Constitution provides that "all of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin," guaranteeing equality before the law without any discrimination, including either racial or ethnic discrimination, which is the subject of this Convention."*[109]

These provisions are bound together with the three sources of power: the Diet (legislative), the Cabinet (administrative) and the Court (judicial). These three organs are responsible for protecting human rights and eliminating racial discrimination.[110] The Japanese Government states further that:

> *"[…] in cases where the rights of the people are infringed, the Court can offer them redress. (Article 32 of the Constitution provides that "no person shall be denied the right of access to the courts.") The Constitution guarantees the judges of their tenure and ensures independent and fair trials, providing that "all judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the law."(Article 76, Paragraph 3)*

> *Provisions of treaties concluded by Japan have legal effect as a part of domestic laws in accordance with Paragraph 2 of Article 98 of the Constitution, which provides the obligation to observe treaties and international law and regulations. Whether or not to apply provisions of the conventions directly is judged in each specific case, taking into consideration the purpose, meaning and wording of the provisions concerned.*"[111]

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[108] Introduction, http://www.mofa.go.jp/policy/human/race_rep1/intro.html, October 22, 2007
[109] Introduction, http://www.mofa.go.jp/policy/human/race_rep1/intro.html, October 22, 2007
[110] Introduction, http://www.mofa.go.jp/policy/human/race_rep1/intro.html, October 22, 2007
[111] Introduction, http://www.mofa.go.jp/policy/human/race_rep1/intro.html, October 22, 2007

A recent official statement by the Government of Japan submitted on 26 June 2006 to the Secretariat of the Commission of Human Rights regarding the Ainu issue states:

> *"The Government of Japan recognizes that the Ainu, who have developed a unique culture including the Ainu language as well as original manners and customs, lived in the north of Japan, especially in Hokkaido before the arrival of so-called "Wajin" as a historical fact."*[112]

In terms of its policy on the human rights issues in Japan, the Japanese Government states:

> *"The Japanese Government formulated this Basic Plan of Human Rights Education and Encouragement through a Cabinet decision in March 2002 based on Article 7 of the Law for the Development of Human Rights Education and Encouragement. The Basic Plan lists the specific human rights problems, which need to be addressed, such as the issues of Dowa*[113]*, the Ainu people and foreign nationals, and provides that measures to eliminate prejudice and discrimination against such persons should be promoted. The measures for human rights education and encouragement under the Basic Plan are reported to the Diet as an annual report in accordance with the provision of Article 8 of the law.*
>
> *In addition, the human rights organs of the Ministry of Justice have carried out various activities to promote human rights on a nationwide basis throughout the year. In particular, during Human Rights Week (December 4 – 10), the human rights organs have conducted promotion activities, setting priority targets such as "Eliminate Dowa discrimination," "Improve understanding of the Ainu people" and "Respect the human rights of foreign nationals."*[114]

The visit of Mr. Doudou Diene, UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, sheds light on the reality of human rights conditions in Japan today. The Government of Japan welcomed the visit of Mr. Diene from July 3rd- 11th, 2005. His mission was to assess the factors that have caused discrimination towards minority groups (including indigenous people, descendants of former Japanese colonies, foreigners and other migrant workers), such as the caste-like class system, and to examine how the Government of Japan handles these problems and to assess whether these measures are appropriate.[115] To carry this out, Mr. Diene collected information from the Government of Japan, local authorities, NGOs, and victims of discrimination in Japanese society.

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[112] IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL" : 13 Paragraph 85 , A/HRC/1/G/3

[113] Dowa: an administrative term for the issue of discrimination against the Buraku people, called Dowa people by the administration. See Discrimination against Buraku People, http://blhrri.org/blhrri_e/other/004_e.htm, October 22, 2007

[114] IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL" : 9 - 10 Paragraph 74 , A/HRC/1/G/3

[115] Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination, Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related-Intolerance, Doudou Dine, Economic and Social Council, 24 January2006, Summary E/CN.4/2006/16/Add.2

Mr. Diene's report on his mission to Japan was submitted in January 2006 to the UN Commission on Human Rights at its sixty-second session.[116] From May 13th to 18th 2006, the Special Rapporteur had an unofficial follow-up visit to Japan to learn more about the situation in Okinawa, Osaka, and Tokyo.[117]

The report concluded that there is racial discrimination and xenophobia in Japan, which affects three circles of discriminated groups:

> *"1), the Buraku people, the Ainu and the people of Okinawa; 2), people and descendants of former Japanese colonies (Koreans and Chinese); and 3) foreigners and migrants from other Asian countries and the rest of the world."*[118]

Information sharing to present a situation of the Ainu to the Special Rapporteur was organized by the International Movement against All Forms of Discrimination and Racism (IMADR) on July 17th, 2005.[119] The Special Rapporteur made several assessments of the Ainu, and acknowledged the historical fact that the assimilation policy after 1867, the Meiji Restoration, damaging Ainu society and culture had continued until the twentieth century.[120]

I would like to introduce briefly three criticisms raised by Mr. Diene in Public Authorities' Political and Legal Strategy section in this report. The Ainu Cultural Promotion Act established the Foundation for Research and Promotion of Ainu culture where they hold a language class to teach the Ainu language. However, one does not call for creation of a specific writing tailored to the Ainu language, which is necessary to prevent the Ainu language from disappearing. Secondly, he describes a lack of a quota system for the Ainu children to go to universities. Thirdly, the Ainu Cultural Promotion Act in 1997 states a concern for the Ainu culture, but does not promote their human rights. Moreover, he states that the demand from the Ainu to be recognized as indigenous peoples can not be satisfied

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[116] Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination, Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related-Intolerance, Doudou Dine, Economic and Social Council, 24 January2006 E/CN.4/2006/16/Add.2

[117] Personal Communication by a group Email with IMADAR (The International Movement Against All Forms of Discrimination and Racism), May 5, 2006

[118] UN Special Rapporteur Diene's Japan Mission Report & NGO Response, http://www.imadr.org/en/news/2007/01/un_special_rapporteur_dienes_j.html, October 28, 2007

[119] Personal Communication by a group Email with IMADAR (The International Movement Against All Forms of Discrimination and Racism), June 30, 2005

[120] Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination, Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related-Intolerance, Doudou Dine, Economic and Social Council, 24 January2006 : 9, E/CN.4/2006/16/Add.2

and it would be a breach of the Constitution, since equality is guaranteed in the Japanese Constitution before the law for each Japanese.[121]

The report provided two other assessments. The first regards gender inequality. Ainu women would like to have greater representation in the Ainu Association, the largest Ainu organization comprising exclusively registered Ainu members in Hokkaido. There are 20 Ainu Associations Board of Directors, but only one is women. The second point concerns political representation: the Ainu are absent in the national political sphere[122]

Although there is only one Ainu woman currently on the Ainu Association Board of Directors, Ainu women are active in other ways. For example, many Ainu women are involved in cultural transmission and revival activities, and recently a group of Ainu women has begun organizing around issues of ethnic and gender discrimination, or "multiple discrimination."[123]

Finally, he introduced two strategies in the report. He states that the Ainu community believes that education is a key to solving the discrimination, for example coming from many Japanese, especially on the main island; they do not know anything about Ainu history or even Ainu existence. Second, it is crucial that the Ainu are recognized as indigenous peoples in compliance with international law. The Ainu Cultural Promotion Act of 1997, which only promotes Ainu culture, is not sufficient in this respect.[124]

In response, the Government of Japan submitted its concerns about the report to the Secretariat of the Commission on Human Rights on June 26th 2006, saying that there were many statements which were beyond the Special Rapporteur's mandate, and that the Special Rapporteur's mandate is to resolve the various human rights issues confronted all over the

[121] Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination, Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related-Intolerance, Doudou Dine, Economic and Social Council, 24 January2006 : 9, E/CN.4/2006/16/Add.2
[122] Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination, Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related-Intolerance, Doudou Dine, Economic and Social Council, 24 January2006 : 13 - 14, E/CN.4/2006/16/Add.2
[123] Hokkaido Ainu Association Sapporo Branch 2007
[124] Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination, Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related-Intolerance, Doudou Dine, Economic and Social Council, 24 January2006 : 13, E/CN.4/2006/16/Add.2

world. The Government of Japan states that the mandate of the Special Rapporteur is to examine:[125]

> *"[…]incidents of contemporary forms of racism, racial discrimination, any form of discrimination against Blacks, Arabs and Muslims, xenophobia, negrophobia, anti-Semitism, and related intolerance, as well as governmental measures to overcome them."(E/CN.4/RES/1994/164)*[126]

The Government of Japan also points out that the Special Rapporteur's statements about the past, such as "forced labor" and "comfort women" during World War II, has no relation to the issue of "contemporary forms of discrimination."[127]

The official statement by the Government of Japan illustrates that a continuous and invisible assimilation norm continues to exert pressure on minority populations in Japan. The question is regarding who decides what is best for minority groups and indigenous peoples, and what measurements are used for further understanding of the minority groups and indigenous peoples. It is clear that there are social, economic, cultural and political gaps between the Japanese and the Ainu. The damage caused by the earlier assimilation policies has surely continued in the modern society, which should be considered and counted as bearing on "contemporary" forms of discrimination. Discrimination and prejudice never exist independently, but are interconnected to social actions.

Despite the Government's negative response, the Special Rapporteur's report has been highly valued at the grassroots level, as indicated in the NGO Joint Statement in response to the report. This report was released on March 7th 2006, and has been signed by 85 minority and human rights groups in Japan as of October 31st, 2006.[128]

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[125] IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUAMN RIGHTS COUNCIL"Note verbale dated 30 May 2006 from the Permanent Mission of Japan to the United Nations Office at Geneva addressed to the Secretariat of the Commission on Human Rights, 26 June 2006 : 2

[126] IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUAMN RIGHTS COUNCIL"Note verbale dated 30 May 2006 from the Permanent Mission of Japan to the United Nations Office at Geneva addressed to the Secretariat of the Commission on Human Rights, 26 June 2006 : 2

[127] IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUAMN RIGHTS COUNCIL"Note verbale dated 30 May 2006 from the Permanent Mission of Japan to the United Nations Office at Geneva addressed to the Secretariat of the Commission on Human Rights, 26 June 2006 : 2

[128] UN Special Rapporteur Diene's Japan Mission Report & NGO Response http://www.imadr.org/en/news/2007/01/un_special_rapporteur_dienes_j.html October 22 2007

The reason it has been highly valued is that it is the first UN document to address the issue of racism, racial discrimination and xenophobia in Japan, explaining the need to deal with these issues in the aspects of their social and historical context, not only the legal aspect. It also emphasizes that a multicultural society can only exist when there are appropriate policies that acknowledge the social and historical context of these issues while recognizing that there are clearly groups in Japanese society which have been invisible or poorly recognized.

Norway

Since declaring independence from Sweden in 1905,[129] it seems that Norway has been focusing on building a strong nation state. After World War II, it seems that it has been addressing a concept of human rights stronger than other Scandinavian countries, which may mean that individual equality is guaranteed under international standard setting. Particularly, a development process of the state, it might have been extremely important for the Norwegian Government as well as Norwegians to pursue who are real Norwegians and who are not in order to strengthen the nation as Norway. When there was one who failed to identify themselves as Norwegians, a basic concept was that an appropriate governmental policy, Norwegianization, might have applied for them in order to integrate and develop the Norwegian nation.

Minde explains an aspect of the institutional and political situation that, from the mid-19 century, language, education, and a Christian upbringing were focused on very much, and were major subjects in teachers' training in Norway. He further states:

> *"After the Second World War and the Holocaust, scientists gradually began to shift their focus to other ideological motives and social processes. Elements of social darwinism and racial overtone came to light, forming a backdrop to the early policy-and research. The problems which the school encountered in Sami areas were now no longer limited to a question of language which could be resolved by more sophisticated educational means. The problem had to be studies in the light of social processes both inside and outside the schoolroom."*[130]

This statement illustrates a gradual change in Norway influenced by the international moral or recognition of social process.

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[129] Norway, http://en.wikipedia.org/wiki/Norway#Human_rights_in_Norway, October 28, 2007
[130] Minde 2005: 8

Therefore, a strong and ambitious nation state, Norway, profiled as a human rights country nowadays, excluded the Sami by the political policy, which became a black stop in the Norwegian history.

It is ironic that a concept of human rights that guarantees individual equality failed in a way that it made the Sami to suffer for maintaining their culture and livelihood. This should be more considered and protected by a regulation that recognizes fundamental differences between majority groups and indigenous peoples, not to make the other groups practice their way of thinking, customs, and tradition etc. Especially, indigenous peoples traditionally have lived close to each other and live collectively in a way that they share land collectively and share necessary materials together, which is a foundation of their livelihood.

Given my personal experience as the Ainu, I believe that a social formulation of each distinguished group in the nation state is stretched into a larger scale. The major two foundations are a collective and individual formation. The majority group of the nation state, especially developed countries, often follows the individualism which links to the process of capitalism.

On the other hand, indigenous peoples are more likely to formulate their societies collectively as mentioned above. The collectivism plays an important role in structuring lands, natural resources, and peoples in indigenous communities. Thus, the main focus of many indigenous peoples has been the adoption of collective rights and self-determination in the last few decades.

Irene Watson illustrates an indigenous way of living in relation to the human rights and collectivity:

> *"The land is a body interconnected, we are a part of the land, and as humanity continues to mindlessly allow the land to be violated, we violate ourselves. Human rights discourse is founded in western philosophy and thought, and its relationship to the natural world is disconnected, and this reflected in the way states have constructed human rights law and discourse. Indigenous peoples have a different way of knowing, a way which centers on the earth mother. Rights from an indigenous perspective embrace the natural world; the exclusion of the natural world in discussions on indigenous rights renders the process meaningless. Our culture, our laws and identities are written in the landscapes of our ancestors, without the land we are the empty shell of humanity."*[131]

[131] Watson 2001 : 30

Moreover, as she states above, the land is something fundamental to all human beings regardless of which ethnic group you belong to since it is an origin of our livelihood. A division of lands and cultural values in a systematic way does not bring any further and richer soil on the ground. Accepting the fact that we all belong to the lands, the rights to build up the fundamental way of living on the lands for indigenous peoples should be respected.

However, on the other hand, there is a fact that many indigenous peoples are integrated or assimilated into a dominant society, and there is the need to have some political or legal tool to protect rights of indigenous peoples. The Sami human rights expert, Henriksen, explains four categories of rights:

> *"International human rights protection for indigenous peoples can be summarized into four categories of rights:*
> *(1) ordinary individual human rights;*
> *(2) specific minority rights, whenever applicable to indigenous individuals;*
> *(3) specific indigenous peoples rights;*
> *(4) specific 'peoples' rights."*[132]

These four categories are critical in human rights protection for indigenous peoples, especially No. 4. It is because the other three categories are not so difficult to be recognized by the nation state. No. 1 is the right that is given to any individual regardless of your ethnic background. No. 2 is a minority right that is formulated as individual rights. No 3 is rights to recognize indigenous peoples who have occupied ancestral lands, in is somehow an association of nature. No. 4 is the most difficult part as it requires collective rights that include self-determination.

When you go back to the Sami issue in the context of human rights, there is probably a positive consequence brought about by the human rights concept in Norway. It has perhaps broadened an opportunity for the Sami to receive higher and practical education that gives them a tool to negotiate with Norwegians.

Therefore, there are two phenomena I would like to emphasize again on reasoning why the Sami have been successful in the domestic and international arena. One is that it could be explained by the fact that the larger Sami population started to receive higher education under the influence of western culture. This led to a fact that they gained power in knowledge and a

[132] Henriksen, 2006 : 30

social system as being equal as Norwegians. Another one is that, as mentioned earlier in this text, the Sami from the inland were somehow left out in the assimilation policy. Due to this "assimilation failure," the Sami leaders manage to maintain their strength in the culture and politics.

In terms of an institutional level of the promotion done by the Norwegian Government, Norway's Report to the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples in 2003 demonstrates information that as the Plan of Action for Human Rights, a Competence Centre of Indigenous People's Rights was established in Kautokeino by the Norwegian Government and started in autumn 2002. The institution consists of the Sami themselves selected from the University of Tromsø, the Nordic Sami Institute, the Saami University College, the Institute of Human Rights, and the Saami Council. [133]

The Centre was established with the purpose of increasing the general public's knowledge of indigenous people's rights in Norway. It is also aimed at creating a professional network with other institutions dealing with indigenous issues at the domestic and international levels. Moreover, it is considered an important factor to document the rights of indigenous peoples and to disseminate information to various public and private sectors, such as organizations, institutions, lawyers, and schools.[134]

The Norwegian Government, in connection to the Ministry of Local Government and Regional Development, has managed to have a project to work on Sami language issues and information on Sami affairs.

> *"In June 2002, the Ministry of Local Government and Regional Development, the Samediggi and Statskonsult (the Directorate of Public Management Development) submitted a report entitled "The New Sami" reporting that the reason why a small number of Sami have chosen to register them on the Sami electoral roll is the previous national assimilation policy.*

[133] Norway's Report to the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, which is submitted on 14.03.2003 : 3, Paragraph 2 in Chapter 2 http://www.regjeringen.no/upload/kilde/krd/rap/2003/0021/ddd/pdfv/172587-reportonthesituationofhuman_rights.pdf, October 15, 2007

[134] Norway's Report to the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, which is submitted on 14.03.2003 : 3, Paragraph 2 in Chapter 2 http://www.regjeringen.no/upload/kilde/krd/rap/2003/0021/ddd/pdfv/172587-reportonthesituationofhuman_rights.pdf, October 15, 2007

The government will review existing knowledge and previous research projects on the cause of negative attitudes towards the Sami, and how these attitudes can be counteracted. The government will also consider initiating further research projects to explore these questions more thoroughly."[135]

This statement indicates an acceptance of the negative consequence of the earlier assimilation, and has an intention to remove the negative impact or damage caused by the assimilation.

An effort to develop a local institution in the most populated Sami community which is run by the Sami themselves is a big step forward. I believe that to run the institution that can document information relating to indigenous people and share it with them is very important. This kind of system should be encouraged in Japan.

One of the remarkable events in Norway I would like to focus on in relation to the issue of human rights is the visit of Rodolfo Stavenhagen who is the United Nations' Special Rapporteur on the situation of human rights and fundamental freedom of indigenous peoples during 9th – 10th of October in 2003. His visit was not an official mission as the UN Special Rapporteur, but was the first time that the UN Special Rapporteur visited Samiland, and the Sami people had great expectations for his visit, through obtaining the information during his stay. His official purpose of the visit in Norway was to attend the Forum Conference 2003, invited by the University of Tromsø and particularly by the Centre for Sami Studies. He also received the invitation from the Sami Parliament, which he visited after the conference. Although it was not his official mission to visit Norway as the UN Special Rapporteur, the Sami Parliament had a plan to invite him the following year, 2004, to make a special report on the Sami to the UN Human Rights Commission.[136]

Therefore, there was a mutual interest from the Sami Parliament and himself to make it the official mission in a near future. Moreover, he expressed a great interest in learning about a relationship between the state and the Sami on the matter of the Finnmark Act, land, and natural resources. Especially, as Norway ratified the ILO Convention No. 169, he liked to

[135] Norway's Report to the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, which is submitted on 14.03.2003 : 4 Paragraph 6 in Chapter 2 http://www.regjeringen.no/upload/kilde/krd/rap/2003/0021/ddd/pdfv/172587-reportonthesituationofhuman_rights.pdf, October 15, 2007

[136] Rodolfo Stavenhagen: Indigenous Human Rights http://www.sami.uit.no/forum/2003/stavenhagen_article.html, October 22, 2007

learn how it had been implemented. He also made a statement in the article for the Forum for Development Cooperation with Indigenous Peoples Conference:[137]

> *"Norway has always taken UN reports very seriously, and cooperated with the UN system in terms of their directions regarding human rights."* [138]
>
> *"Norwegian state and the Sami people is considered worldwide as a model relationship between the indigenous peoples and the national state. As such, other indigenous peoples and states may learn from what happens in Norway."*[139]

It illustrates through this statement that Norway started to be seen as a model country for many other indigenous peoples. It is indeed an interesting dimension that the Sami have developed.

In conclusion, two Sami representatives made a comment on Norway in a human rights context. Mr. Henriksen states an awareness of human rights was something that definitely played a big role in the ratification of ILO Convention No. 169 (Phone interview: November 30, 2006).

Moreover, Mr.Fjellheim stated that Norway did not want to have negative publicity. Norway is a very receptive country when it concerns international publicity. This factor is important because Norway is a relatively new country and likes the profile of being a "human rights country." Norway has a strong belief in the international community. Mr. Fjellheim also stated that the recognition of the human rights naturally increased because the Sami movement has been working on the international human rights instrument. It is because the Sami have felt that it could be their tool to use (Personal interview: Copenhagen, September 5, 2006).

Lov om sametinget og andre samiske rettsforhold (The Sami Act) in 1987, Norway

The Norwegian Government adopted *Lov om sametinget og ander samiske rettsforhold* the so- called Sami Act on June 12th, 1987 concerning the Sami parliament and other Sami legal

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[137] Rodolfo Stavenhagen: Indigenous Human Rights http://www.sami.uit.no/forum/2003/stavenhagen_article.html, October 22, 2007
[138] Rodolfo Stavenhagen: Indigenous Human Rights http://www.sami.uit.no/forum/2003/stavenhagen_article.html, October 22, 2007
[139] Rodolfo Stavenhagen: Indigenous Human Rights http://www.sami.uit.no/forum/2003/stavenhagen_article.html, October 22, 2007

matters as subsequently amended, most recently by the Act of April 11th, 2003 No.22 Paragraph 1 in Chapter 1 states as below:

> *"The purpose of the Act states is to enable the Sami people in Norway to safeguard and develop their language, and culture and way of life."* [140]

The purpose of the Act as stated above is general, and does not specify particular rights, meaning that it does not specifically clarify the rights of the Sami as indigenous peoples. It is aimed at enabling the Sami people in Norway to safeguard and develop their language, and culture and way of life, but this statement is quite broad in that it could be interpreted in various ways. For instance, a language and culture part does not clarify who and how a procedural process should be pursued in order to implement and develop these elements. An expression of "way of life" used in the purpose of the Act gives a wider degree of understanding, and does not give so much respect for a continuous livelihood of the Sami.

A remarkable part of the Act is recognition of the establishment of the nationwide Sami Parliament run by the Sami themselves, Chapter 1, 1-2 states:

> *"Sami people are to have rights to have their own nation-wide Sameting elected by and among the Sami population."*[141]

Paragraph 1 in Chapter 2,[142] states how an authority of *Sameting* (Sami Parliament) should be performed, and how the Sami Parliament should be located in the authority. It indicates that they are an advisory body, not the one which makes a final decision on any related Sami matters.

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[140] Act of 12 June 1987 No. 56 concerning the Sameting (the Sami parliament) and other Sami legal matter (the Sami Act) as subsequently amended, most recently by Act of 11 April 2003 No. 22 : 1 http://www.ub.uio.no/ujur/ulovdata/lov-19870612-056-eng.pdf, October 22, 2007

[141] Act of 12 June 1987 No. 56 concerning the Sameting (the Sami parliament) and other Sami legal matter (the Sami Act) as subsequently amended, most recently by Act of 11 April 2003 No. 22 : 1 http://www.ub.uio.no/ujur/ulovdata/lov-19870612-056-eng.pdf, October 22, 2007

[142] 2-1: The business of the Sameting is any matter that in the view of the parliament particularly affects the Sami people. The Sameting may on its own initiative raise and pronounce an opinion on any matter coming within the scope of its business. It may also on its own initiatives refer matters to public authorities and private institution, etc.
The Sameting may delegate authority to administer the allocations granted for the purpose of the Sami people over the annual fiscal budget. The ministry will lay down rules for the financial management of the Sameting. The Sameting has the power of decision when this follows from other provisions in the Act or is otherwise laid down. Act of 12 June 1987 No. 56 concerning the Sameting (the Sami parliament) and other Sami legal matter (the Sami Act) as subsequently amended, most recently by Act of 11 April 2003 No. 22 : 1 http://www.ub.uio.no/ujur/ulovdata/lov-19870612-056-eng.pdf, October 22, 2007

Nevertheless, it is still remarkable that the Sami gained the right to establish their own Parliament with their own people. As is mentioned earlier in this text, it is critically important for indigenous peoples to have a representative body in the nation state where they can raise their own voices and represent their status in the state.

Another positive part in this Act is that the Sami flag is officially and nationally recognized in the Act. The Sami flag was accepted as a national flag on August 15th, 1986 at the 13th Nordic Sami Conference.[143] This element to symbolize their identity is important as it re-create a positive image of the Sámi, both for the Sami and Norwegians as opposed to keeping a negative image of the assimilation history. To have the symbolic flag in the official places increases an awareness of the Sami and Sami issues in Norway. However, on the other hand, according to my personal experience in Norway, there are still strong objections from Norwegian citizens to accept the Sami flag as part of the national flag together with the Norwegian flag.

In terms of the language, it is stated in paragraph 5 in Chapter 1:

> *"Sami and Norwegian are languages of equal worth. They shall be accorded equal status pursuant to the provisions of Chapter 3."*

Therefore, the Sami language is recognized as one of the official languages in Norway. As my personal observation, I came to realize that the usage of Sami in schools and kindergardens is crucial to the development of the Sami language for the Sami youth because the Norwegian Government secures the Sami school. It seems to be a place where they also develop their identity through the surrounding and having their own language.

Even though there is an established social system for the Sami to learn their language from an early age, and have their own institution, a challenging part is how to identify as the Sami. This difficulty, I believe, is more linked to discrimination and prejudice rather than the system by itself. Because discrimination and prejudice have existed in social actions over a long period of time, it is challenging to decide when it should be the turning point to walk forward not backward.

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[143] Act of 12 June 1987 No. 56 concerning the Sameting (the Sami parliament) and other Sami legal matter (the Sami Act) as subsequently amended, most recently by Act of 11 April 2003 No. 22 : 1 http://www.ub.uio.no/ujur/ulovdata/lov-19870612-056-eng.pdf, October 22, 2007

The Sami Act is one of the legal instruments that establish criteria for who the Sami are beside indigenous identification guideline, the Cobo definition and Article 1[144] in ILO 169. Paragraph 6 in Chapter 2:

> *"All persons who make a declaration to the effect that they consider themselves to be Sami, and who either*
> *a. have Sami as their domestic language, or*
> *b. have or have had a parent, grandparent or great-grandparent with Sami as his or her domestic language, or*
> *c. are the child of a person who is or has been registered in the Sami electoral register*
> *may demand to be included in a separate register of Sami electors in their municipality of residence."*[145]

As Mr. Henriksen explained earlier in the text about the self-identification, it is a crucial element in the indigenous identification. When you compare the Sami case to the Ainu, what they share in common seems to be that one had Sami or Ainu blood, but are not carrying the identity. A difference is the Sami case gives social recognition as supported by the institution more than the Ainu.

Law for the promotion of the Ainu Culture and for the Dissemination and Advocacy for the Tradition of the Ainu and the Ainu Culture in 1997, Japan

Today, Ainu continue to face oppression at both the institutional and individual levels. Despite the Japanese government's insistence that Ainu enjoy rights as Japanese citizens, the government's persistent denial of their indigenous identity and right to self-determination prevent the Ainu from exercising their indigenous rights.

Hokkaido Former Aboriginal Protection Act[146] was enacted 1899, which is similar to the Daws Act in the United States. The purpose of the Act was to be unsuccessful in its attempt to assimilate the Ainu into the Japanese society as agricultures.[147] All lands, which are rich soil for agriculture, were taken by the Japanese government. Agriculture was forcedly introduced into the Ainu so that Ainu's traditions, such as hunting and fishing, were no longer in the

[144] See Appendix
[145] Act of 12 June 1987 No. 56 concerning the Sameting (the Sami parliament) and other Sami legal matter (the Sami Act) as subsequently amended, most recently by Act of 11 April 2003 No. 22 : 3 http://www.ub.uio.no/ujur/ulovdata/lov-19870612-056-eng.pdf, October 22, 2007
[146] The Hokkaido Former Aborigines Protection Act in 1899: Meiji government decree that actually promoted economic and political decline and encouraged Ainu assimilation into Japanese society. Fitzhugh 1999:26
[147] Tsunemoto, 1999 : 366

condition to remain due to the law restriction.[148] Also, according to my personal communication with my grandmother, a boarding school concept was applied for Ainu, where Ainu only had a chance to learn technical skills to get physical work, and the use of the Ainu language was strictly prohibited. A corporal punishment was conducted when Ainu students break a rule.

Therefore, the assimilation policy became a tool to create a class classification in Japanese society. These two elements, unsuccessful agriculture and difficulty on the job market, led Ainu to a severe financial condition.

In 1997, finally the Hokkaido Former Aborigines Protection Act was abolished when the Ainu Culture Promotion Act was enacted.[149]

As a result of the Ainu Culture Promotion Act, the Foundation for the Research and Promotion of Ainu Culture (hereafter FRPAC) was established and supported by the Hokkaido Development Agency and the Ministry of Education. It consists of both Ainu and Japanese and is based in Sapporo with a branch in Tokyo. FRPAC has a certain budget every year to support the promotion of the Ainu culture. The president is a Japanese bureaucrat appointed by the Hokkaido government while the vice-president is the Ainu. A purpose of the foundation is below:[150]

> *"(1) promotion of research on the Ainu*
> *(2) the revival of the Ainu language*
> *(3) the revival of Ainu culture*
> *(4) the dissemination of, and education about, Ainu traditions."*[151]

Moreover, the Ainu Culture Promotion Act states a purpose of the law, Article 1 below:

> *"This law aims to realize the society in which the ethnic pride of the Ainu peoples is respected and to contribute to the development of diverse cultures in our country, by the implementation of the measures for the promotion of Ainu culture (hereafter called "Ainu Tradition"), the spread of knowledge related to Ainu Traditions, and the education of the nation, referring to the situation of Ainu traditions and culture from which the Ainu people find their ethnic pride."*[152]

Article 2 defined a meaning of the Ainu culture:

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[148] Siddle 1999 : 72
[149] Tsunemoto 1999 : 370
[150] Siddle Richard, An epoch-making event? The 1997 Ainu Cultural Promotion Act and its impact : 412 http://www.informaworld.com/smpp/content~content=a713772204~db=all~order=page October 31, 2007
[151] Siddle Richard, An epoch-making event? The 1997 Ainu Cultural Promotion Act and its impact : 413 http://www.informaworld.com/smpp/content~content=a713772204~db=all~order=page October 31, 2007
[152] Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture, http://www.frpac.or.jp/eng/e_prf/profile06.html, October 31, 2007

> *"The Ainu Culture" in this law means the Ainu language and cultural properties such as music, dance, crafts, and other cultural properties which have been inherited by the Ainu people, and other cultural properties developed from these."*[153]

These two articles demonstrate how the Ainu Culture Promotion Act is limited in defining what Ainu culture is and how it should be respected. The purpose of the Act apparently focuses on a realization of the Ainu in Japanese society and promotes the Ainu culture.

A part in Article 1: "to contribute to the development of diverse cultures in our country" also seems to have the same spirit as the previous Act, the Hokkaido Former Aborigines Protection Act. It is because the development of the Ainu culture is expected to contribute diverse cultures defined by Japanese Government.

Another part in Article 1 is "the Ainu people find their ethnic pride." To make it clear, the ethnic pride has been taken away by the Government assimilation policy a long time ago. What the Ainu need is to have a secure foundation to develop their culture, identity, and social status in a way that fits into their current livelihood.

Therefore, a purpose of FRPAC and the Ainu Cultural Promotion Act does not give a wider range of what the Ainu culture is and how the current Ainu live in the modern world. The potential ability in the Ainu culture to formulate a new way of expressing the language and culture is not respected.

In terms of the Ainu identification, there is no such a legal definition in the law to define who is the Ainu or not either. Therefore, it creates friction among the Ainu community when FRPAC decides who they should award financial support to in Ainu cultural, and research projects. Because in this way, the Ainu identification becomes politicized, and those Ainu who are willing to work on their projects have to account in pubic that they are the Ainu.

According to my personal experience, the Ainu identification is a severe and delicate issue. As there is no legal or established definition of who is the Ainu, it relies on the subjective criterion. The subjective criterion often is linked to physical appearance and family background. A challenge comes in for the younger generation who are mixed between the

[153] Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture, http://www.frpac.or.jp/eng/e_prf/profile06.html, October 31, 2007

Ainu and Japanese if they do not fit into the stereotyped Ainu look. This means that if the person does not have a backup that clarifies his/her blood and community, it is rather difficult to be recognized as the Ainu.

Another difficulty is the spouse who marries to the Ainu. It is also challenging for them to be recognized as the Ainu no matter how many years they are married to the person.

Since we all follow a flow of the globalization that allows us to travel and to have more opportunity to share other culture, a new social phenomenon has been created among the Ainu community. It seems that a strong will to decide who the Ainu is and who is not has become stronger over time because the Ainu feel that is the only thing to hang onto for identifying themselves after losing land, tradition, and language.

In conclusion, it is urged to revise the Ainu Culture Promotion Act and to recognize the Ainu as indigenous peoples of Japan under the international law standard.

Chapter 5: Concluding Remarks

"Wishing you peace

Awhile, I take refuse with you
Open briefly my heart
Crawl into your thoughts' warm embrace
For a short while
Give me security
Spread your wings"[154]

A contrast between the Sami in Norway and Ainu in Japan gives a new dimension to indigenous politics. Taking different examples of changes in the indigenous politics in the thesis illustrates a new path for indigenous peoples to develop their own ground.

In the case of Norway, there seems to be a clear indication that Sami in Norway and the Norwegian Government and society followed a flow of an active domestic indigenous movement from 1970th. The Alta dam case was a big kick to start the Sami political and social movement. An institutionalization of the Sami community, such as the establishment of Sami Act and Sami parliament, was another critical point on this matter. Most importantly, it was also time for young new Sami leaders, who gained knowledge both in the Sami and Norwegian society, to represent themselves and other Sami. They definitely played a big role in the whole process of the development of indigenous discourse in Norway.

This domestic movement increased the awareness of human rights and the term "indigenous peoples," and it even reached the international community. This element facilitated an involvement of the Sami participation in the international conferences. Some young Sami leaders started to take an initiative with the government representatives and other indigenous peoples from all over the world in those conferences.

The institutionalization of the Sami community was something to strengthen the movement and helped the Sami to carry their identity. To have Sami public celebrations and gatherings also helps to have a continuous flow in a cultural aspect.

On the other hand, in terms of the institutionalization of the Ainu community, there is a similarity to the Sami case in that we have an institution, the Ainu Association of Hokkaido,

[154] Valkeapää 2003

located in Sapporo, Hokkaido. However, it contains a problem that it only covers the Hokkaido area, not anywhere else in Japan, so that the Ainu who have moved to urban cities and difference areas are systematically ignored. This makes it more challenging for the Ainu to unify as one ethnic group. A division caused by a friction in small domestic movements among the Ainu community is problematic, and it has been difficult to reach a point of receiving collective solidarity in the whole of Japan.

Another reason why the Ainu domestic movement has not developed as quickly as the Sami in a firm way could be that the Ainu were trapped in a concept of the assimilation and even small influence of Christianity. For the Christianity part, it is not necessary mean negative, but could say that it might have rather limited a development of indigenous discourse among the Ainu. For the assimilation part, it seems that it was ironically believed that the best way it to be assimilated so that next generation would not suffer from it. This phenomenon was caused simply because the Ainu were not exposed to the world yet to pursue a different approach to their issue. Also, it is that the indigenous politics in the world was not developed yet, and indigenous peoples might not have reached a point to realize how to deal with a power in the indigenous politics.

The dialogue between the Sami organization, such as the Sami Parliament or Sami council and the Norwegian Government became a necessity in the negotiation process on any Sami related matters. Meanwhile, the existence of the ILO seems to play the role of a facilitator when both parties fail to have the mutual negotiation, especially on the matter of the ILO Convention No. 169.

Therefore, the ratification of Convention No. 169 became a reality due to the domestic and international movements, together with an active Sami participation for those movements and a procedure for Convention No.169.

In terms of the implementation of Convention No.169 in Norway, it seems that there had and has been the challenge for the Sami to gain more rights as indigenous peoples, especially the right of the ownership and usage of natural resources. However, especially on the issue of the ILO Convention No. 169, they managed to deal with the issue because they have developed their way of systemizing the issue. One good example was the case of the Finnmark Act. The Sami utilized a legal system in the ILO Convention No. 169, their own institution, and the

relationship they had developed for a decade in the most effective way. That has been clarified in this thesis through the interview where it was revealed that the Finnmark Act and the ILO Convention No. 169 became more grass rooted instruments for the Sami in Norway.

Moreover, Norway is a nearly new country and has been still in the development in terms of an ideology as a nation state. This means that it is easier to formulate the country when the country is still in a development process in terms of a conceptualization of people, social norms, and etc. Also, Norway is a small nation state in Europe, and has just become independent economically, so it seems that the Government of Norway is keen to pay more attention to public fame in the international arena. Encouraging the concept of Human Rights might have given it credibility as a country.

In a short history of Norway, the Norwegian Government used an assimilation policy on the Sami. The fact that the Norwegian Government somehow failed to assimilate the Sami completely into the Norwegian society created a different consequence later in the indigenous history in Norway. Those Sami who were from a coastal area were more targeted by the assimilation policy, while those who are from the inland were left out for practical reasons. This led to a condition that the Sami community succeeded to retain leaders in the inland who still carry their culture and identity. Meanwhile, those who have received the Norwegian education system gained more knowledge in a different way. A combination of these two elements created a strong boundary among the Sami community, which became a powerful resource for the political and social movement.

In terms of a legal system, the fact that Norway practices a dualistic legal system seems to be one of the reasons that the Norwegian Government takes an initiative with the indigenous issues.

In the case of Japan, the Hokkaido Former Aborigines Protection Act was the law that was meant for the Ainu, aimed at the assimilation, practically up until 1997, which is the year of the enactment of the new law called Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture. The Act only protects the cultural preservation of the Ainu so a problem still remains.

As Japan practices a monism, it seems that a consequence of the ratification of Convention No. 169 could be more critical in the Constitution of Japan while Norway has more flexibility on this matter.

Two elements, which are the Norwegian legal system and the strong domestic movement, had a central position in the ratification process of the ILO Convention No. 169. Therefore, these elements serve as an explanation for the differences in the ILO Convention No. 169 processes in comparison to Japan.

In contrast to that, the Government of Japan seems to address the issue of the Ainu in a sporadic manner. This means that there is no such corrective consensus on the Ainu issue from the Government's side. For example, the Japanese Government officially recognizes the existence of the Ainu and social position as a "minority," even though they have not recognized the Ainu as indigenous peoples, the Japan Government still points out that the Special Rapporteur reports on the past relation to the Ainu described as "no relation" to the issue of "contemporary forms of" discrimination. However, I believe that discrimination and prejudice, which may be invisible, but can never, exist independently, and they are interconnected in a continuous social action. This was demonstrated inconsequent in the Japanese Government's political speech of the Ainu issue or the term of indigenous peoples.

September 13th, 2007 is a historical date in indigenous politics. The UN Declaration on Rights of Indigenous Peoples was adopted by the General Assembly of the Unites Nations and called for joy from indigenous people from all over the world. The process was actively led by the Norwegian Government, and a remarkable change in the process was that the Japanese Government took a position of being in a favor of the Declaration. This was definitely a step forward in the indigenous politics in Japan. On the other hand, the historical event was not completely shared in the Ainu community. It was rather appreciated by the Ainu leaders who have been active in the international community. (Hasegawa: Personal Interview, Tokyo, Aug 13, 2006)

The Ainu leader in the Kanto region,[155] Mr. Hasegawa states that there is a need to begin to understand what indigenous rights means, and what the adoption of the UN Declaration

[155] Kanto Region : The Kantō region (*Kantō-chihō*) is a geographical area of Honshu, the largest island in Japan.Kanto Region, http://en.wikipedia.org/wiki/Kant%C5%8D_region, October 31, 2007

means to the Ainu. There is a lack of knowledge in this field; people do not feel associated with this issue. Therefore, it is very important to have *Charanke*[156] with each other in the Ainu community. To identify themselves as the Ainu is depending on individual decision. It is important to also identify them in a corrective manner.

As Mr. Hasegawa states, the identification of themselves as Ainu should be established both on an individual and corrective manner. In order to do so, there is a need for the Ainu to have a good position of political and social status, such as having their own institutions, education, and legal protections that allows them to make their own decision on related issues.

Therefore, an understanding and appropriate measures on the Ainu issue from the Japanese Government is urged.

Accepting the concept of indigenous peoples socially by the Japanese Government does not guarantee these elements. The Acceptance of indigenous peoples should be supported by the domestic and international legal system, and most importantly, by domestic support from the Ainu because the domestic power resource is a power plant of the indigenous movement. In the meantime, the understanding is required of the fact that indigenous peoples are not a threat for the Government, but rather, nutrition that enriches the country in political and economic matters.

[156] Charanke : A discussion in the Ainu language (Hasegawa: Personal Communication, Tokyo, 30 August 2007)

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Appendix:

Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries

PART I. GENERAL POLICY

Article 1

1. This Convention applies to:

(a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The use of the term "peoples" in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for:

(a) Ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

(b) Promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;

(c) Assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

Article 3

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.

2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

Article 4

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.

2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.

3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

Article 5

In applying the provisions of this Convention:

(a) The social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;

(b) The integrity of the values, practices and institutions of these peoples shall be respected;

(c) Policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

Article 6

1. In applying the provisions of this Convention, Governments shall:

(a) Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

(b) Establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

(c) Establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

Article 7

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

Article 8

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

Article 9

1. To the extent compatible with the national legal system and internationally recognised human rights. the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.

2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

Article 10

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics.

2. Preference shall be given to methods of punishment other than confinement in prison.

Article 11

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

Article 12

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

PART II. LAND

Article 13

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

2. The use of the term "lands" in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

Article 16

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 18

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

Article 19

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

(a) The provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;

(b) The provision of the means required to promote the development of the lands which these peoples already possess.

PART III. RECRUITMENT AND CONDITIONS OF EMPLOYMENT

Article 20

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

(a) Admission to employment, including skilled employment, as well as measures for promotion and advancement;

(b) Equal remuneration for work of equal value;

(c) Medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;

(d) The right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.

3. The measures taken shall include measures to ensure:

(a) That workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;

(b) That workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;

(c) That workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;

(d) That workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

PART IV. VOCATIONAL TRAINING, HANDICRAFTS AND RURAL INDUSTRIES

Article 21

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

Article 22

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.

3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

Article 23

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these peoples and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

PART V. SOCIAL SECURITY AND HEALTH

Article 24

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

Article 25

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.

4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.

PART VI. EDUCATION AND MEANS OF COMMUNICATION

Article 26

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

Article 27

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations. hey shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.

3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards

established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

Article 28

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.

3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

Article 29

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

Article 30

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.

2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

Article 31

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

PART VII. CONTACTS AND CO-OPERATION ACROSS BORDERS

Article 32

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

PART VIII. ADMINISTRATION

Article 33

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.

2. These programmes shall include:

(a) The planning, co-ordination, execution and evaluation, in co- operation with the peoples concerned, of the measures provided for in this Convention;

(b) The proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.

PART IX. GENERAL PROVISIONS

Article 34

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

Article 35

The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

PART X. FINAL PROVISIONS

Article 36

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

Article 37

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 38

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 39

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 40

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 41

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 42

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 43

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

(a) The ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 39 above, if and when the new revising Convention shall have come into force;

(b) As from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 44

The English and French versions of the text of this Convention are equally authoritative.

* This is a direct link to the ILO ILOLEX database. Ratification information is updated daily.

Sited from Convention (No. 169) concerning Indigenous Peoples and Tribal Peoples in Independent Countries, http://www.unhchr.ch/html/menu3/b/62.htm, October 22 2007

THE CONSTITUTION OF JAPAN

CHAPTER I: THE EMPEROR

Article 1:

The Emperor shall be the symbol of the State and the unity of the people, deriving his position from the will of the people with whom resides sovereign power.

Article 2:

The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

Article 3:

The advice and approval of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

Article 4:

The Emperor shall perform only such acts in matters of state as are provided for in this Constitution and he shall not have powers related to government. 2) The Emperor may delegate the performance of his acts in matters of state as may be provided for by law.

Article 5:

When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. In this case, paragraph one of the preceding Article will be applicable.

Article 6:

The Emperor shall appoint the Prime Minister as designated by the Emperor shall appoint the Chief Judge of the Supreme Court as designated by the Cabinet.

Article 7:

The Emperor shall, with the advice and approval of the Cabinet, perform the following acts in matters of state on behalf of the people: (1) Promulgation of amendments of the constitution,

laws, cabinet orders and treaties. (2) Convocation of the Diet. (3) Dissolution of the House of Representatives. (4) Proclamation of general election of members of the Diet. (5) Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers. (6) Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights. (7) Awarding of honors. (8) Attestation of instruments of ratification and other diplomatic documents as provided for by law. (9) Receiving foreign ambassadors and ministers. (10) Performance of ceremonial functions.

Article 8:

No property can be given to, or received by, the Imperial House, nor can any gifts be made therefrom, without the authorization of the Diet.

CHAPTER II: RENUNCIATION OF WAR

Article 9:

Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes. 2) In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

CHAPTER III: RIGHTS AND DUTIES OF THE PEOPLE

Article 10:

The conditions necessary for being a Japanese national shall be determined by law.

Article 11:

The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

Article 12:

The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

Article 13:

All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Article 14:

All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin. 2) Peers and peerage shall not be recognized. 3) No privilege shall accompany any award of honor, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

Article 15:

The people have the inalienable right to choose their public officials and to dismiss them. 2) All public officials are servants of the whole community and not of any group thereof. 3) Universal adult suffrage is guaranteed with regard to the election of public officials. 4) In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.

Article 16:

Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition.

Article 17:

Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.

Article 18:

No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

Article 19:

Freedom of thought and conscience shall not be violated.

Article 20:

Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority. 2) No person shall be compelled to take part in any religious acts, celebration, rite or practice. 3) The State and its organs shall refrain from religious education or any other religious activity.

Article 21:

Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. 2) No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

Article 22:

Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare. 2) Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Article 23:

Academic freedom is guaranteed.

Article 24:

Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis. 2) With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other

matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.

Article 25:

All people shall have the right to maintain the minimum standards of wholesome and cultured living. 2) In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

Article 26:

All people shall have the right to receive an equal education correspondent to their ability, as provided for by law. 2) All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.

Article 27:

All people shall have the right and the obligation to work. 2) Standards for wages, hours, rest and other working conditions shall be fixed by law. 3) Children shall not be exploited.

Article 28:

The right of workers to organize and to bargain and act collectively is guaranteed.

Article 29:

The right to own or to hold property is inviolable. 2) Property rights shall be defined by law, in conformity with the public welfare. 3) Private property may be taken for public use upon just compensation therefor.

Article 30:

The people shall be liable to taxation as provided for by law.

Article 31:

No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

Article 32:

No person shall be denied the right of access to the courts.

Article 33:

No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed.

Article 34:

No person shall be arrested or detained without being at once infomed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article 35:

The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33. 2) Each search or seizure shall be made upon separate warrant issued by a competent judicial officer.

Article 36:

The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article 37:

In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal. 2) He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense. 3) At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.

Article 38:

No person shall be compelled to testify against himself. 2) Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence. 3) No person shall be convicted or punished in cases where the only proof against him is his own confession.

Article 39:

No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he had been acquitted, nor shall he be placed in double jeopardy.

Article 40:

Any person may, in case he is acquitted after he has been arrested or detained, sue the State for redress as provided for by law.

CHAPTER IV: THE DIET

Article 41:

The Diet shall be the highest organ of the state power, and shall be the sole law-making organ of the State.

Article 42:

The Diet shall consist of two Houses, namely the House of Representatives and the House of Councillors.

Article 43:

Both Houses shall consist of elected members, representative of all the people. 2) The number of the members of each House shall be fixed by law.

Article 44:

The qualifications of members of both Houses and their electors shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income.

Article 45:

The term of office of members of the House of Representatives shall be four years. However, the term shall be terminated before the full term is up in case the House of Representatives is dissolved.

Article 46:

The term of office of members of the House of Councillors shall be six years, and election for half the members shall take place every three years.

Article 47:

Electoral districts, method of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law.

Article 48:

No person shall be permitted to be a member of both Houses simultaneously.

Article 49:

Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with law.

Article 50:

Except in cases as provided for by law, members of both Houses shall be exempt from apprehension while the Diet is in session, and any members apprehended before the opening of the session shall be freed during the term of the session upon demand of the House.

Article 51:

Members of both Houses shall not be held liable outside the House for speeches, debates or votes cast inside the House.

Article 52:

An ordinary session of the Diet shall be convoked once per year.

Article 53:

The Cabinet may determine to convoke extraordinary sessions of the Diet. When a quarter or more of the total members of either House makes the demand, the Cabinet must determine on such convocation.

Article 54:

When the House of Representatives is dissolved, there must be a general election of members of the House of Representatives within forty(40) days from the date of dissolution, and the Diet must be convoked within thirty(30) days from the date of the election. 2) When the House of Representatives is dissolved, the House of Councillors is closed at the same time. However, the Cabinet may, in time of national emergency, convoke the House of Councillors

in emergency session. 3) Measures taken at such session as mentioned in the proviso of the preceding paragraph shall be provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten(10) days after the opening of the next session of the Diet.

Article 55:

Each House shall judge disputes related to qualifications of its members. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

Article 56:

Business cannot be transacted in either House unless one-third or more of total membership is present. 2) All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided for in the Constitution, and in case of a tie, the presiding officer shall decide the issue.

Article 57:

Deliberation in each House shall be public. However, a secret meeting may be held where a majority of two-thirds or more of those members present passes a resolution therefor. 2) Each House shall keep a record of proceedings. This record shall be published and given general circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy. 3) Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

Article 58:

Each House shall select its own president and other officials. 2) Each House shall establish its rules pertaining to meetings, proceedings and internal discipline, and may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members present must pass a resolution thereon.

Article 59:

A bill becomes a law on passage by both Houses, except as otherwise provided for by the Constitution. 2) A bill, which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present. 3) The provision of the preceding paragraph does not preclude the House of Representatives from calling for the meeting of a joint committee of both Houses, provided for by law. 4) Failure by the House of Councillors to take final action within sixty(60) days after receipt of a bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection of the said bill by the House of Councillors.

Article 60:

The budget must first be submitted to the House of Representatives. 2) Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of Representatives, and when no agreement can be reached even through a joint committee of both Houses, provided for by law, or in the case of failure by the House of Councillors to take final action within thirty(30) days, the period of recess excluded, after the receipt of the

budget passed by the House of Representatives, the decision of the House of Representatives shall be the decision of the Diet.

Article 61:

The second paragraph of the preceding Article applies also the the Diet approval required for the conclusion of treaties.

Article 62:

Each House may conduct investigations in relation to government, and may demand the presence and testimony of witnesses, and the production of records.

Article 63:

The Prime Minister and other Ministers of State may, at any time, appear in either House for the purpose of speaking on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

Article 64:

The Diet shall set up an impeachment court from among the members of both Houses for the purposes of trying those judges against whom removal proceedings have been instituted. 2) Matters relating to impeachment shall be provided for by law.

CHAPTER V: THE CABINET

Article 65:

Executive power shall be vested in the Cabinet.

Article 66:

The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State, as provided for by law. 2) The Prime Minister and other Ministers of State must be civilians. 3) The Cabinet shall, in the exercise of executive power, be collectively responsible to the Diet.

Article 67:

The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. This designation shall precede all other business. 2) If the House of Representatives and the House of Councillors disagree and if no agreement can be reached even through a joint committee of both Houses, provided for by law, or the House of Councillors fails to make designation within ten(10) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet.

Article 68:

The Prime Minister shall appoint the Ministers of State. However, a majority of their number must be chosen from among the members of the Diet. 2) The Prime Minister may remove the Ministers of State as he chooses.

Article 69:

If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten(10) days.

Article 70:

When there is a vacancy in the post of Prime Minister, or upon the first convocation of the Diet after a general election of members of the House of Representatives, the Cabinet shall resign en masse.

Article 71:

In the cases mentioned in the two preceding Articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.

Article 72:

The Prime Minister, representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet and exercises control and supervision over various administrative branches.

Article 73:

The Cabinet shall, in addition to other general administrative functions, perform the following functions: (1) Administer the law faithfully; conduct affairs of state. (2) Manage foreign affairs. (3) Conclude treaties. However, it shall obtain prior or, depending on circumstances sudsequent approval of the Diet. (4) Administer the civil service, in accordance with standards established by law. (5) Prepare the budget, and present it to the cabinet orders in order to execute the provisions of this Constitution and of the law. However, it cannot include penal provisions in such cabinet orders unless authorized by such law. (7) Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

Article 74:

All laws and cabinet orders shall be signed by the competent Minister of State and countersigned by the Prime Minister.

Article 75:

The Ministers of State shall not, during their tenure of office, be subject to legal action without the consent of the Prime Minister. However, the right to take that action is not impaired hereby.

CHAPTER VI: JUDICIARY

Article 76:

The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law. 2) No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power. 3) All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

Article 77:

The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the

courts and the administration of judicial affairs. 2) Public procurators shall be subject to the rule-making power of the Supreme Court. 3) The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article 78:

Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency.

Article 79:

The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; all such judges excepting the Chief Judge shall be appointed by the Cabinet. 2) The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten(10) years, and in the same manner thereafter.

Article 80:

The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten(10) years with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law. 2) The judges of the inferior courts shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 81:

The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

Article 82:

Trials shall be conducted and judgement declared publicly. 2) Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights of people as guaranteed in CHAPTER III of this Constitution are in question shall always be conducted publicly.

CHAPTER VII: FINANCE

Article 83:

The power to administer national finances shall be exercised as the Diet shall determine.

Article 84:

No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may prescribe.

Article 85:

No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

Article 86:

The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year.

Article 87:

In order to provide for unforeseen deficiencies in the budget, a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet must get subsequent approval of the Diet for all payments from the reserve fund.

Article 88:

All property of the Imperial Household shall belong to the State. All expenses of the Imperial Household shall be appropriated by the Diet in the budget.

Article 89:

No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.

Article 90:

Final accounts of the expenditures and revenues of the State shall be audited annually by a Board of Audit and submitted by the Diet, together with the statement of audit, during the fiscal year immediately following the period covered. 2) The organization and competency of the Board of Audit shall be determined by law.

Article 91:

At regular intervals and at least annually the Diet and the people on the state of national finances.

CHAPTER VIII: LOCAL SELF-GOVERNMENT

Article 92:

Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

Article 93:

The local public entities shall establish assemblies as their deliberative organs, in accordance with law. 2) The chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.

Article 94:

Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law.

Article 95:

A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

CHAPTER IX: AMENDMENTS

Article 96:

Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify. 2) Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution.

CHAPTER X: SUPREME LAW

Article 97:

The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free; they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate.

Article 98:

This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity. 2) The treaties concluded by Japan and established laws of nations shall be faithfully observed.

Article 99:

The Emperor or the Regent as well as Ministers of State, members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution.

CHAPTER XI: SUPPLEMENTARY PROVISIONS

Article 100:

This Constitution shall be enforced as from the day when the period of six months will have elapsed counting from the day of its promulgation. 2) The enactment of laws necessary for the enforcement of this Constitution, the election of members of the House of Councillors and the procedure for the convocation of the Diet and other preparatory procedures necessary for the enforcement of this Constitution may be executed before the day prescribed in the preceding paragraph.

Article 101:

If the House of Councillors is not constituted before the effective date of this Constitution, the House of Representatives shall function as the Diet until such time as the House of Councillors shall be constituted.

Article 102:

The term of office for half the members of the House of Councillors serving in the first term under this Constitution shall be three years. Members falling under this category shall be determined in accordance with law.

Article 103:

The Ministers of State, members of the House of Representatives, and judges in office on the effective date of this Constitution, and all other public officials who occupy positions corresponding to such positions as are recognized by this Constitution shall not forfeit their positions automatically on account of the enforcement of this Constitution unless otherwise specified by law. When, however, successors are elected or appointed under the provisions of this Constitution, they shall forfeit their positions as a matter of course.

Sited from THE CONSTITUTION OF JAPAN
http://www.solon.org/Constitutions/Japan/English/english-Constitution.html October 22, 2007

United Nations Declaration on the Rights of Indigenous Peoples

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights4 and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(*a*) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(*b*) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(*c*) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(*d*) Any form of forced assimilation or integration;

(*e*) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual,

religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories,

waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would

dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

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